Central Law Journal.

ST. LOUIS, MO., FEBRUARY 8, 1895.

Some time ago the United States government brought suit in the Pennsylvania Federal Courts to compel the cancellation of the contracts by which the stocks of certain corporations of that State were sold to the American Sugar Refining Company in exchange for stock of that company. The suit was brought under the act of July 2, 1890, the so-called "Sherman Anti-Trust Law." The Circuit Court for the Eastern District of Pennsylvania dismissed the bill and its judgment was affirmed by the Circuit Court of Appeals for the Third Circuit. The action of these courts has now been finally affirmed by the Supreme Court of the United States in an opinion written by Chief Justice Fuller, in which he says that the fundamental question to be considered is whether, conceding that the existence of a monopoly in manufacture is established, that monopoly can be directly suppressed in the mode attempted by the bill. The argument relied upon by the government was in effect that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government, in the exercise of the power to regulate commerce, may repress such monopoly directly and set aside the instruments which have created it. This argument, however, the court said, cannot be confined to necessaries of life, merely, and must include all articles of general consumption, and it is vital that the independence of the commercial power and of the police power, and the limitation between them, should always be recognized and observed. In the opinion of the court the act was framed in the light of well-settled principles. Congress did not attempt thereby to assert the power to deal with monopoly as such or to limit and restrict the rights of corporations created by the States in the acquisition, control or disposition of property, or to regulate or prescribe the price at which such property or the products thereof should be sold, or to make criminal the acts of persons in the acqusition and control of property which the States of their residence sanction. What the law aimed at was combinations, contracts and conspiracies to monopolize trade and commerce among the several States or with foreign nations, whereas the contracts and acts of the defendant related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Pennsylvania, and bore no direct relation to commerce between the States or with foreign nations. The object was manifestly private gain, but not through the control of interstate or foreign commerce. The bill set forth that the products of the refineries in question were sold among the several States and that all the companies were engaged in commerce with the several States and with foreign nations. But this, the court said, was no more than to say that trade and commerce helped manufacture to fulfill its functions. There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce and the fact that trade or commerce might be indirectly affected was not enough to entitle the government to a decree.

The Supreme Court of Justice of Belguim has just been called upon to decide a novel and extraordinary question. One of the leading surgeons of Brussels had occasion, about a year ago, to amputate the right leg of a young married lady belonging to the highest circles of the aristocracy. The operator was so pleased with his job that he preserved the leg in a jar of spirits of wine and placed it on exhibition in his consulting room, a card being affixed to the jar giving the patient's name and the details concerning the circumstances which had rendered the operation necessary. On hearing this, the husband of the lady demanded the immediate discontinuance of the exhibition and the return of the severed member as being his property. To this the surgeon demurred. He admitted that the plaintiff had property rights in the leg while it formed part of his wife, but argued that the leg in its present condition was the result of his (defendant's) skill and the work of his own hands and that he was clearly entitled to keep it. The court seemed rather staggered

by this line of argument and after taking a fortnight to consider the question has finally decided against the doctor and in favor of the husband's claim to the possession of the amputated leg of his better-half.

NOTES OF RECENT DECISIONS.

INTERSTATE EXTRADITION—FUGITIVE FROM JUSTICE.—In Pearce v. State of Texas, the Supreme Court of the United States hold that the courts of a State from which a fugitive from justice is demanded on extradition, do not deny to such person any rights secured to him by the constitution and laws of the United States, by refusing to pass on the constitutionality of the statute of the demanding State under which the indictment against such person is found. Mr. Chief Justice Fuller, who delivered the opinion, says:

The grounds on which the relator contended that he was entitled to be discharged were, as stated by the Court of Appeals, that the indictments were insufficient to authorize his extradition, because it was not alleged therein that the offenses were committed in the State of Alabama, and in violation of her laws; that the indictments were wholly void, in that no time or place was laid therein, and it did not appear where the offenses were committed, nor that they were not long since barred. Relator further showed that he had been a citizen of Texas for more than three years, and that his whereabouts were known to interested parties in Alabama, this proof being made under the statute of limitations, presumably of Texas, as it did not appear how long the offenses were committed prior to the February Term, 1889, of the Mobile City Court, at which term the indictments were found, nor what was the statute of limitations in Alabama, if any, for embezzlement and theft. The relator did not deny that he was a fugitive from justice within the rule on that subject, or raise any issue thereon. The record showed the requisition made by the governor of Alabama, copies of the indictments duly certified, and the warrant of the governor of Texas; and, in effect, the relator relied for his discharge entirely upon the invalidity of the indictments.

The district judge certified that, on the hearing below, he had examined the laws of the State of Alabama, and found the indictments sufficient thereunder, or "at least not void." An opinion was filed in the Court of Appeals by Simkins, J., in which it was held that any indictment which, under the laws of the demanding State, sufficiently charges the crime, will sustain a requisition, even though insufficient under the laws of the asylum State; that in this case there was no question as to the nature of the crimes charged, and that they were offenses against the laws of Alabama; that indictments dispensing with the allegations of time and venue in conformity with the Code of Alabama had been sustained by judicial decision in that State (Noles v. State, 24 Ala. 693; Thompson v. State, 25 Ala. 41), and were not necessarily fatally defective in every State of the Union, whatever its statutes or forms of proceeding. The majority of the court did not concur in all the propositions stated in the opinion, but expressed their views as follows: "We desire to modify certain propositions stated in the opinion of Judge Simkins. It is intimated, if not stated directly, that the relator would have the right to show by proper evidence that the indictment in substance was not sufficient under the laws of the demanding State. Our position upon this question is that if it reasonably appears upon the trial of the *habeas corpus* that the relator is charged by indictment in the demanding State, whether the indictment be sufficient or not under the law of that State, the court trying the *habeas corpus* case will not discharge the relator because of substantial defects in the indictment under the laws of the demanding State. To require this would entail upon the court an investigation of the sufficiency of the indictment in the demanding State, when the true rule is that if it appears to the court that he is charged by an indictment with an offense, all other prerequisites being complied with, the applicant should be extradited. We are not discussing the character of such proof; this must be made by a certified copy of the indictment, etc."

It was not disputed that the indictments were in substantial conformity with the statute of Alabama in that behalf, and their sufficiency as a matter of technical pleading would not be inquired into on *habeas corpus*. *Ex parte* Reggel, 114 U. S. 642, 5 Sup. Ct. Rep. 1148. Nor was there any contention as to the proper demand having been made by the executive authority of the State from whence the petitioner had departed, or in respect of the discharge of the duty imposed by the constitution and laws of the United States on the executive authority of the asylum State to cause the surrender. The question resolved itself, therefore, into one of the validity of the statute on the ground of its repugnancy to the constitution, and the Court of Appeals declined to decide in favor of its validity. And, if it could be said upon the record that any right under the constitution had been specially set up and claimed by plaintiff in error, at the proper time and in the proper way, the State Court did not decide against such right, for the denial of the right depended upon a decision in favor of the validity of the statute. What the State court did was to leave the question as to whether the statute was in violation of the constitution of the United States, and the indictments insufficient accordingly, to the demanding State. Its action in that regard simply remitted to the courts of Alabama the duty of protecting the accused in the enjoyments of his constitutional rights, and if any of those rights should be denied him, which is not to be presumed, he could then seek his remedy in this court.

We cannot discover that the Court of Appeals, in declining to pass upon the question raised, in advance of the courts of Alabama, denied to plaintiff in error any right secured to him by the constitution and laws of the United States, or that the court, in announcing that conclusion, erroneously disposed of a federal question.

STATE LIABILITY FOR NEGLIGENCE OF OFFICERS — ACTION — LIABILITY OF BAILEE.—In Chapman v. State, 38 Pac. Rep. 457, the Supreme Court of California decide that in the absence of statute a State is not liable for the negligence of its officers in the discharge of

their ordinary official duties; that under Const. art. 4, § 31, which prohibits the legislature from making a gift of public money or other thing of value to any person, it cannot, by statute, create a liability against the State for acts of past negligence on the part of its officers, and that complaint in an action against the State, alleging that defendant, for a valuable consideration, received on the public wharf coal belonging to plaintiff, to be delivered to him, and that the coal was lost by the giving way of the wharf, and that plaintiff was damaged thereby, states a cause of action on the contract of bailment, and not on negligence. They also hold that a wharfinger is impliedly bound to use ordinary care for the safety of property intrusted to him, and must see that the wharf is reasonably safe. The court says:

It is claimed by the plaintiff that he is entitled to maintain this action under the permission and authority given by the act authorizing suits against the State, approved February 28, 1893 (St. 1893, p. 57). The first section of this act provides as follows: "All persons who have or shall hereafter have claims on contract or for negligence against the State not allowed by the State board of examiners, are hereby authorized, on the terms and conditions herein contained, to bring suit thereon against the State in any of the courts of this State of competent jurisdiction, and prosecute the same to final judgment." The cause of action set forth in the complaint arose prior to the passage of the act just referred to; and it is argued by the attorney general that, at the time when the coal belonging to the assignors of plaintiff was lost, the State was not liable for the damage occasioned by said loss, and growing out of the alleged negligence of said officers in charge of the wharf mentioned in the complaint, and that the act should not be construed as intended to create any liability against the State for such past negligence. It is well settled that, in the absence of a statute voluntarily assuming such liability, the State is not liable in damages for the negligent acts of its officers while engaged in discharging ordinary official duties pertaining to the administration of the government of the State. Bourn v. Hart, 93 Cal. 321, 28 Pac. Rep. 951; Story, Ag. § 319. It is also true that under section 31 of article 4 of the constitution of this State, which forbids the legislature from making any gift of public money or other thing of value to any person, the legislature has no power to create a liability against the State for any past act of negligence upon the part of its officers; and a statute undertaking to assume a liability upon the part of the State for the negligence of its officers in cases where, under the general rules of law, a master would have to respond for the negligent acts of his servant, would only be valid in so far as it might relate to future acts of negligence. If, therefore, the present action is to be regarded as one for the recovery of damages arising out of the negligence of the officers of the State in the discharge of a strictly governmental duty, it cannot be sustained. But we are clearly of the opinion that the cause of action alleged in the complaint is not of this character. It is not founded upon negligence constituting a tort pure and simple, and unrelated to any contract, but is substantially an action for damages on account of the alleged breach of a contract. The facts stated in the complaint show that the defendant, in consideration of wharfage paid to it, received upon one its of public wharves the coal belonging to plaintiff's assignors, and to be delivered to them on such wharf for removal therefrom. A wharfinger is one who for hire receives merchandise on his wharf, either for the purpose of forwarding or for delivery to the consignee on such wharf; and the matters alleged in the complaint show a contract of the latter character, and the State is bound thereby to the same extent as a private person engaged in conducting the business of a wharfinger would be under a similar contract. The principle that a State is bound by the same rules as an individual in measuring its liability on a contract is well expressed by Allen, J., in his concurring opinion in the case of People v. Stephens, 71 N. Y. 549, in which he said: "The State in all its contracts and dealings with individuals must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each other. There is not one law for the sovereign, and another for the subject. But when the sovereign engages in business and the conduct of business enterprises and contracts with individuals, whenever the contract, in any form, comes before the courts, the rights and obligations of the contracting parties must be adjusted upon the same principle as if both contracting parties were private persons. Both stand upon an equality before the law, and the sovereign is merged in the dealer, contractor, and suitor." See, also, Carr v. State, 127 Ind. 204, 26 N. E. Rep. 778.

What, then, was the nature and extent of the obligation assumed by the State when, in consideration of the wharfage paid by them, it received the coal of plaintiff's assignors upon its wharf? "The wharfinger is bound to return or deliver the goods according to his contract." Edw. Bailm. (3d Ed.) § 362. A wharfinger is impliedly bound, by his contract as such, to exercise ordinary care for the preservation and safety of property intrusted to him (*Id.* § 359), and this imposes upon him the duty to exercise ordinary care to ascertain the condition of his wharf, that he may know whether it is reasonably safe for the purposes for which he hires it: and if merchandise is received by him upon a wharf which is unsafe, and is thereby lost so that he cannot deliver it according to his contract, the wharfinger is liable therefor if ordinary care would have enabled him to know the condition of his wharf, and such negligence on his part will be treated as a failure to exercise ordinary care for the safety of the property intrusted to him. This negligence, however, and the consequent loss of the goods intrusted to him, would be a breach of the terms of his contract and his liability therefor could have been enforced at common law by an action of *assumpsit* (1 Chit. Pl. *114; Baker v. Liscoe, 7 Term. R. 171); and under our practice the owner or consignee may sue upon the contract for the damages sustained by reason of such negligence. "The wharfinger's responsibility begins as soon as he acquires the custody of the goods, and ends when he has fulfilled his express or implied contract with respect to both." Edw. Bailm. § 357. And the Supreme Court of Washington, in the case of Oregon Imp. Co. v. Seattle Gaslight Co. (Wash.), 30 Pac. 672, in passing upon the question of the liability of a wharfinger, upon his contract as such, by reason of his wharf giving way and precipitating into the waters beneath a

quantity of shale which had been received thereon, said: "This was a contract of bailment. The contract was proven, the loss was proven, and the negligence of respondent was proven and the measure of the damages is the value of the shale." We are entirely satisfied that plaintiff's cause of action, as alleged in the complaint, arises upon contract, and that the liability of the State accrued at the time of its breach, —that is, when the coal was lost through the negligence of the officers in charge of the State's wharf,—although there was then no law giving to the plaintiff's assignors the right to sue the State therefor. At that time the only remedy given the citizen to enforce the contract liabilities of the State was to present the claim arising thereon to the State board of examiners for allowance, or to appeal to the legislature for an appropriation to pay the same; but the right to sue the State has since been given by the act of February 28, 1893, and, in so far as that act gives the right to sue the State upon its contracts, the legislature did not create any liability or cause of action against the State where none existed before. The State was always liable upon its contracts, and the act just referred to merely gave an additional remedy for the enforcement of such liability, and it is not, even as applied to prior contracts, in conflict with any provision of the constitution. "The fact that the State is not subject to an action in behalf of a citizen does not establish that he has no claim against the State, or that no liability exists from the State to him. It only shows that he cannot enforce against the State his claim, and make it answer in a court of law for its liability. What is made out by this objection is not that there is no liability and no claim, but that there is no remedy." Coster v. Mayor, etc., 43 N. Y. 407.

CONTRACT FOR PERSONAL SERVICES—SURVIVORSHIP.—In Marvel v. Philips, decided by the Supreme Judicial Court of Massachusetts, plaintiff, an inventor and applicant for letters patent, assigned his invention to defendant's testator, who agreed to pay all expenses of obtaining said letters patent, to manage the business for the joint benefit of both, to advance all requisite funds and look to the business for repayment and to do all things which a wise and energetic owner of said patents with ample financial ability ought to do, and who bound himself and his legal representatives as above. It was held that the obligation of testator was personal and that his executors were not bound by said agreement. Allen, J., says:

Without dwelling upon other objections, we are of opinion that the plaintiff is not entitled to such a conveyance as he seeks, because the obligation of Phillips under the agreement was discharged by his death. The chief undertakings were personal in their character. He was to endeavor to create a profitable business under the patents, and to manage it, to advance funds for the repayment of which he was to look solely to the business, to use all reasonable efforts to increase and supply the demand for the elevator and conveyor, and to do all things which a wise and energetic owner of said patents with ample financial ability ought to do. This implies personal skill, attention, and ability of a high order. The amount of money required to be advanced is not stated, but obviously it would be considerable. "Ample financial ability" is called for by the contract. The different parts of the agreement are not separable. Philips was to advance all funds requisite, but was to look to the business for repayment. Accordingly, it is frankly conceded by the counsel for the plaintiff that, if the duties of Phillips were of such a character that they did not descend to his executors, his obligation to furnish money would not descend. A contract to render such services and to perform such duties is subject to the implied condition that the party shall be alive and well enough in health to perform it. Death or a disability which renders performance impossible discharges the contract. Neither Phillips nor his estate is bound to furnish a substitute, nor is the plaintiff bound to accept one. There are many cases where this doctrine is illustrated, some of which may be cited: Stewart v. Loring, 5 Allen, 306; Harrison v. Conlan, 10 Allen, 85; Wells v. Calnan, 107 Mass. 514; Bank v. Beal, 141 Mass. 566, 570, 6 N. E. Rep. 742, and cases there cited; Butterfield v. Byron, 153 Mass. 517,27 N. E. Rep. 667; Spaulding v. Rosa, 71 N. Y. 40; People v. Globe Mut. Life Ins. Co., 91 N. Y. 174; Dickey v. Linscott, 20 Me. 453; Yerrington v. Greene, 7 R. I. 589; Shultz v. Johnson, 5 B. Mon. 497; Poussard v. Spiers, 1 Q. B. Div. 410. See, also, Pol. Cont. *368, *373-*378. There is nothing in the terms of this contract to show that, in case of the death of Phillips, the parties intended that his executors should assume to carry on the business. The final provision which is chiefly relied on, "I agree and bind myself and my legal representatives as above," does not bind his executors to do anything from which he himself was discharged. It does not provide for a substituted performance in case of death, but, if he fails to perform anything covered by his agreement, then the executors are bound, as he is, to make good the loss. He might select such person for executor as he chose. Suppose he should appoint a woman unused to business, and entirely incompetent to create and carry on such an enterprise as that contemplated. If she is bound to assume the duties which, by the contract, he undertook, then the plaintiff is bound to accept her in place of Phillips, unless he could succeed in procuring her removal. The result would be that not only would the estate of Phillips be tied up and exposed to hazard for an indefinite time, but the plaintiff's interests might be sacrificed by reason of Phillips' appointment of an unsuitable executor. It would require explicit words to show that parties entering into a contract like this intended that executors should perform the duties undertaken by Phillips. Even in the case of a partnership, a provision for continuing a partner's interest after his death must be clear and unambiguous. Bacon v. Pomeror, 104 Mass. 577, 585; Burwell v. Mandeville, 2 How. 560, 577; Smith v. Ayer, 101 U. S. 320, 329, 330; Kirkman v. Booth, 11 Beav. 273, 280. Story, Partn. § 319, a. The plaintiff's petition must be dismissed, but without prejudice to a new bill to compel the conveyance of the patents to the plaintiff, in case the defendants should hereafter refuse to make such conveyance.

CRIMINAL LAW AND PROCEDURE—SUSPENSION OF SENTENCE.—It is held by the Supreme Court of North Carolina in State v. Crook, 20 S. E. Rep. 513, that where sentence is

suspended against two convicted persons on the condition that one of them pay all the costs of the case, and such person pays but part of the costs, the presiding judge may impose the suspended sentence, though such defendant had already been committed to jail for default of payment of such costs. The following is from the opinion of the court:

It is familiar learning that a court may suspend the judgment over a criminal in toto until another term, but has no power to impose two sentences for a single offense, as by pronouncing judgment under one count in an indictment, and reserving the right to punish under another count at a subsequent term, or by imposing a fine, and at a latter term superadding imprisonment. State v. Ray, 50 Iowa, 520; State v. Miller, 6 Baxt. 513; State v. Watson, 95 Mo. 411, 8 S. W. Rep. 383; People v. Felix, 45 Cal. 163; Thurman v. State, 54 Ark. 120, 15 S. W. Rep. 84; Whart. Cr. Pl. & Pr. § 913; Whitney v. State, 6 Lea, 247. The judgments, orders, and decrees of a court, as a general rule, are under its control and subject to modification during the term at which they are entered; but where a defendant has undergone a part of the punishment the sentence cannot be revoked, and another, except in diminution or mitigation, substituted for it, because he would be twice placed in jeopardy, and twice subjected to punishment, for the same offense. State v. Warren, 92 N. C. 825; *Ex parte* Lange, 18 Wall. 163. The punishment which the courts are prohibited from inflicting twice is usually fine or imprisenment, now that corporal punishment is inflicted only in a few offenses, of a character more serious than that of which the defendant was convicted. State v. Burton, 113 N. C. 662, 18 S. E. Rep. 657; 1 Bish. Crim. Law, § 940. But costs neither constitute a part of the relief in civil actions (4 Amer. & Eng. Enc. Law, p. 313, and note), nor of the punishment in criminal prosecutions, though the payment of them, or a propositions to pay, may be considered in mitigation of sentence by the court. The payment of costs is regulated by our statute (Code, § 1211), which provides that every person convicted, or confessing himself guilty or submitting to the court, shall pay the costs of the prosecution, and the legal effect of a conviction and judgment is to vest the right to the costs in those entitled to them; but, where a fine is imposed, it is due to the State, and is remitted by a pardon granted by the governor. State v. Mooney, 74 N. C. 99. The right of the officers to recover costs in the name of the State is a mere incidental one, arising out of the conviction under the provisions of our statute; and the judgment for them, as we have seen, vests the claim in the officers to whom they are due. The order for the payment of them is no more a part of the punishment proper than that to pay an allowance and costs on conviction in bastardy; but in both cases the legislature, in the exercise of the police powers of the State, has provided for the protection of the public by making a defendant liable to imprisonment, as an inducement to the payment of such costs or allowance. State v. Burton, at page 659, 113 N. C., and page 657, 18 S. E. Rep.; Meyers v. Stafford, 114 N. C. 234, 19 S. E. Rep. 764; State v. Parsons (decided at this term), 20 S. E. Rep. 511. In Com. v. Dowdican's Bail, 115 Mass. 136, we find a recognition of the principle we have stated in the long continued practice of the courts of that State, which eventually (in 1865 and 1869) received the sanction of the legislature. The court said: "It has long been a common practice in this commonwealth, after verdict of guilty in a criminal case, when the court is satisfied that by reason of extenuating circumstances, or the pendency of a question of law in a like case before a higher court, or other sufficient cause, public justice does not require an immediate sentence, to order, with the consent of the defendant and the attorney for the commonwealth, and upon such terms as the court, in its discretion, may impose, that the indictment be laid on file. * * * Such an order is not equivalent to a final judgment, or to a *nolle prosequi* or discontinuance, by which the case is put out of court, but is a mere suspending of active proceedings in the case, which dispenses with the necessity of entering formal continuances upon the docket, and leaves it within the power of the court at any time, upon the motion of either party, to bring the case forward, and pass any lawful order or judgment thereon. Neither the order laying the judgment on file, nor the payment of costs, therefore, entitled the defendant to be finally discharged." It thus appears that, under the name of "laying the indictment on file," the courts of that State accomplished the same result attained here by suspending judgment. Such orders are not prejudicial, but favorable, to defendants, in that punishment is postponed, with the possibility of escaping it altogether; and it is presumed that the party adjudged guilty is present and assenting to, if not asking for, such orders. Gibson v. State, 68 Miss. 241, 8 South. Rep. 329. If the payment of the costs constitutes no part of the punishment, as was held by the Supreme Court of Massachusetts and by the court of Mississippi in Gibson's Case, *supra*, as well as by the Supreme Court of Florida in *Ex parte* Williams, 26 Fla. 310, 8 South. Rep. 425, then the payment of a portion of it by the defendant is not undergoing or performing a part of the sentence, and does not bring this case within the principle announced in State v. Warren and *Ex parte* Lange, *supra*. Easterling v. State, 35 Miss. 210.

It is conceded that when the court couples with the payment of the costs any judgment that might have constituted a part of sentence, as that a public nuisance be abated, in case of conviction for creating it, the power of the court is exhausted in its rendition, and the suspension of judgment is deemed to have been ordered on condition of the performance of such requirement. State v. Addy, 43 N. J. Law, 113; Gibson v. State, *supra*. But the suspension of the judgment upon the payment of the whole of the costs by one of the two defendants in this case, including the solicitor's fee due from his codefendant, and the actual payment of both fees taxed for the prosecuting officer, fails to bring it within the principle announced in Addy's Case, *supra*, since the adjudication that such codefendant pay his own fee, as a part of the costs, would have constituted no part of his punishment, and when added, as a part of the costs, to defendant's bill, inflicts no punishmeut on him. The court merely suspended judgment on the condition of paying the costs of the other defendant, as well as his own, as a part of the terms upon which the favor of the postponement was granted, as it is the practice to do on conviction in such cases. Gibson's Case, *supra*.

BAILMENT—NEGLIGENCE OF PROPRIETOR OF BATH HOUSE.—In Tombler v. Koelling, 28 S. W. Rep. 795, decided by the Supreme Court of Arkansas, it was held that the owner of a

bath house who gives a check to a bather for valuables left in his custody and knowing well both the bather and the valuables, gives the valuables to another person on presentation of the check, is liable for their value. The court said in part:

The appellee had been bathing at the bath house owned by appellant Tombler, in the City of Hot Springs, for about three weeks, depositing his watch, chain, a railroad ticket and money at the bath house office daily with appellant Clark, and receiving a metallic check from Clark, the superintendent or manager of the bath house; when one day depositing these articles as usual with Clark, he received a check for them, which he put in a pocket in his clothes entered the bath house, disrobed, hung his clothes on a hook in the bath room, took a bath and went into a hall to cool off, and shortly afterwards returned to the bath room, got his clothing, and went to the bath room office, and presented a check for his property left with Clark, who handing him something corresponding to the check, which he declined to receive, it not being the property he had left with Clark. Some one else had presented his check to Clark, and received the property of the appellee, and substituted another check for appellee's while his clothing was hanging in the bath room. * * * This is a case of bailment for a consideration received by the bailee, who was bound to exercise ordinary care and diligence to preserve and restore the property delivered by the bailor to the bailee, or to some one who was authorized by the bailor to receive it. The property was not so delivered by the bailee, but was delivered to another, who was not authorized to receive it. The bailee knew the bailor and his property well, and testified: "If I had looked at the party who presented the check, I would have known he was not entitled to the package." The check was a means of identification of the property, but was no evidence that the owner of the property had parted with his title to it, or that he had authorized its delivery to any one who might present the check, though not entitled to receive it. Where property is committed to the custody of a bailee for safe keeping, it is the bailee's duty to use ordinary care and diligence to keep the property safely: and if it is lost through the failure on his part to do so, he is liable. A negligent delivery of the property by him to another, whereby it is lost to the owner, will not relieve him from liability. Had the bailee not previously known the bailor and the property, there might have been some excuse for delivery of the property to the person who presented the check for it, though he was not entitled to receive it; but such a case is not presented or decided here. It seems that, though the bailor was not as prudent as he ought to have been, yet the bailee might have avoided the loss by the exercise of ordinary care, which is such care as a prudent man would exercise, under like circumstance, to protect his own interest.

ALIENS AND CITIZENSHIP.

The very large percentage of foreign born citizens exercising the right of unrestricted suffrage in the United States, has recently been made the subject of much discussion. As a remedy for the supposed evils, stricter emigration laws have been advocated. However, the critics in whose eyes the dignity of citizenship has been cheapened, have generally displayed a most lamentable want of information concerning the limitations imposed by our government upon foreigners who present themselves as candidates for its suffrage. The many arguments against promiscuous emigration may be perfectly sound and logical, but the fallacy exists in the connection presumed between emigration and naturalization. Our laws regulating emigration may be weak and lax. There, then, is the point to build and to strengthen. But our requirements for the rights of citizenship are more strict and exacting than are observed in any other republic of power and influence.

The act by which an alien is made a citizen is called naturalization, and the right thereof exists in governments independent of constitutional enactment.[1] Vattell, writing for all nations, held that a nation or a sovereign, who represents it, may grant to a stranger the quality of a citizen by admitting him into the body of the political society.[2] This undoubtedly expresses the general right of the government to naturalize. But in the United States this privilege of citizenship, extending even to color and race, is regulated by the constitution, and the power of naturalization rests exclusively with congress and cannot be exercised by the States.[3] But though the States may not naturalize, they are yet entitled to grant special privileges to aliens. And the question how far those privileges may be extended without conflict with the national government, has furnished much food for discussion.[4] Each State is sovereign, except as to matters referred to the general government. As a result of that sovereignty, it may confer the rights of citizenship on whomsoever it pleases, so far as to make him a citizen of that State, though he will not thereby become a citizen of the United States.[5]

Twelve of the States permit aliens, after a short residence and declaration of intention to become citizens, to exercise the elective franchise. As between the special privileges of the States and the immunities of the citi-

[1] Morse on Citizenship, Chapt. 1.
[2] Vattel's Law of Nat. Book I, Chap. 19.
[3] 1 Kent Sec. 424; 1 Minor's Inst. 139.
[4] Cooley, Const. Lim, p. 245.
[5] Scott v. Sandford, 19 How. (U. S.) 393.

zen, ex-Judge Cooley sees very little distinction: "Where an alien is given the privilege to reside within a State, and to hold property of all kinds therein, and to exercise the privilege of suffrage, the distinction in right and privilege and immunity between him and a citizen is not very plain. One privilege, at least, the State could not confer upon an alien without the power of naturalization. She could not give him, as a citizen, a title to those privileges and immunities of citizens of the several States which the Federal constitution guarantees and secures."[6] As the suffrage belongs to citizens, and as the voters for representatives in the State legislature may vote for representatives in congress also, it would seem that there might be a question whether a State could confer upon an alien this high privilege. It is a question, however, which has never been made.[7] It is to be observed in passing, that whatever criticism may be made concerning the apparent or possible conflict of the States, "special privileges," and the national constitution, the wrong does not exist in the laxity of the Federal requirements.

I. *Who May Become Citizens.*—Any alien friend who is a free white person or a person of African nativity or descent, who has made the preliminary declaration prescribed by law, who has resided for the five years next preceding his application in the United States, and for one year next preceding such application in the State or territory in which the court sits to which he makes application, and who, during that time, has been of good, moral character, attached to the principles of the constitution of the United States, and well disposed to the good order of the same, may become a citizen of the United States.[8] The most prejudiced critic would hardly exact a fairer law for a republic. The popular conceit has been that any foreigner, of any race or color, after a limited residence, with or without a moral character, might, with the utmost facility, become invested with the dignities of an American citizen. The conceit is wrong. The argument is not that the requirements of the law are not strictly enough observed, but that the naturalization laws are impotent and dangerous. It is not whether aliens who become citizens are to be permitted to hold certain offices, but whether they are to be allowed the privileges of national support, protection and immunity. The term of necessary residence is considerable, but better than that the moral character of the applicant can, in every case, where the courts act honestly, be made a salutary test to determine the advisability for citizenship. Besides the provisions as to race are not general, but restricted. The white and African alone are favored. So exclusive are we that even the Indians, the native owners of the soil, are not permitted the exercise of the franchise.[9] The Mongolian, to whatever nationality he may lay claim, is not admitted, nor even persons of half white and half Indian blood.[10] It had been long held that the Chinese were barred from participation in the rights of American citizenship under the terms of the constitution, but for fear there might be a too lax use of judicial discretion, a subsequent act was passed providing in distinct and unambiguous terms, that no court shall naturalize Chinese, which removed all doubt as to the eligibility of the Chinese, and more clearly asserted the statute of 1878, allowing only persons of the white and African races to become citizens.[11] Under this enactment a native of the Hawaiian Islands, belonging to neither race, has been held ineligible to citizenship,[12] and this rule has been maintained throughout without exception. The only way to the franchise left open to the unfortunate alien, whose color or race or tribe is a bar, is a special enactment or privilege granted by congress, authorizing the assumption of citizenship after due process of law.[13]

The Indians are denied relief under the general naturalization law, for the reason that they are bound by their tribal relations, owing primary allegiance to the chief. They cannot be termed foreigners for they are within the territorial limits of the United States. Yet the tribe is a distinct nation, a political community, with whom the president or congress may deal by treaty or in the usual forms of legislation. It has, therefore, been held that general acts of congress do not apply to Indians unless they are expressly

[6] Cooley, Const Lim. 77.
[7] Cooley, Const. Lim. 78.
[8] Rev. Stat. U. S. Sec. 2165.
[9] Elk v. Wilkins, 112 U. S. 94.
[10] *In re* Ah Tuk, 5 Sawy. 155.
[11] Rev. Stat. U. S. Sec. 2169, 22 St. at Large, 61.
[12] *In re* Kanaka Kian, 21 Pac. Rep. 933.
[13] Wilson v. Wall. 6 Wall. 83.

included.[14] The test of the Indian's right to vote was authoritatively decided in the United States Supreme Court. An Indian brought suit in the Circuit Court, for the District of Nebraska, against the registrar of a ward for refusal to register him as a voter. The action was based on the first section of the fourteenth amendment to the constitution of the United States: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The contention of the plaintiff was further strengthened by the fifteenth amendment, providing that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color or previous condition of servitude. The court held that, although the Indian had abandoned his tribal relations and surrendered himself to the authorities of the United States, the government of the United States had not accepted his surrender. The plaintiff had not been naturalized or treated as a citizen by either State or national government. "Subject to the jurisdiction thereof," meant completely subject to the political jurisdiction of the United States and owing them immediate allegiance. Indians born within the limits of the United States, but among tribes to which they owe direct allegiance, are no more born within the United States and "subject to the jurisdiction thereof" than the children of subjects of foreign nations, born within the dominions of those governments. The plaintiff was not a citizen by birth and could only become one by admission under some treaty or statute. The relief prayed for was therefore denied.[15]

Section 2165 of the Revised Statutes of the United States, providing for a preliminary declaration of intention to become a citizen, is modified by section 2167 following, so as to permit any alien who has resided in the United States for five years, of which three were the years next preceding his arriving at the age of twenty-one years, and who has continued to reside therein up to the time of his application for admission as a citizen, may become a citizen without having made the preliminary declaration of intention required as a first condition, provided that he shall make the declaration required therein at the time of his admission, and furnish proof and declare on oath that for two years it has been his intention to become a citizen of the United States, and in all other respects comply with the laws in regard to naturalization. But no alien who is a native citizen or subject or a denizen of any country, State or sovereignty with which the United States are at war, shall be then admitted to become a citizen of the United States.[16]

The children of naturalized citizens of the United States, who are under twenty-one years of age at the time of their parents' naturalization, shall, if living in this country, be considered citizens thereof.[17] The minor children of alien parents, whose father died and whose mother afterward married a citizen became citizens.[18] An interesting decision, construing the statute regarding minors, has been rendered in New York State. A son was born abroad, and while yet an infant came to the United States with his parents who were aliens. The father died when the lad was eight years old. The mother afterward married an alien resident. The latter became a citizen, however, when the son and mother were living with him. It was held that the mother had become a citizen under the terms of section 1994 of the Revised Statutes of the United States, and that consequently the son became a citizen under section 2172, which provides that children under age of persons naturalized shall be deemed citizens.[19]

Likewise children of persons naturalized are citizens, who resided within the United States at the time of the naturalization of their parent, but who were born of alien parents in a foreign country.[20] And all children born abroad of United States citizens, are also citizens.[21] Females are not excluded from citizenship, and the wives of citizens, whether native born or made citizens by naturalization, if capable of naturalization, are considered citizens.[22] Under this act an alien

[14] Cherokees v. Georgia, 5 Peters (U. S.), 1.
[15] Elk v. Wilkins, 112 U. S. 94.
[16] Rev. Stat. U. S. Sec. 2171.
[17] Rev. Stat. U. S. Sec. 2172.
[18] Kreity v. Behrenmyer, 125 Ill. 741.
[19] People v. Newell, 38 Hun, 78.
[20] West v. West, 8 Paige (N. Y.), 434; U. S. v. Kellar, 13 Fed. Rep. 82; U. S. v. Hirschfield, 13 Blatch. (U. S.) 330.
[21] Wolff v. Archibald, 14 Fed. Rep. 369.
[22] Rev. Stat. U. S. Sec. 1994.

woman belonging to the classes entitled to be naturalized, who marries a citizen, becomes by that act also a citizen. Such admission to citizenship has the same force as if the naturalization were based on the judgment of a competent court.[23] It is not necessary for a woman to furnish the qualifications of a residence, or good character or intention. It is sufficient if she belongs to the race or class capable of naturalization under existing laws.[24] Whenever the husband becomes a citizen, the wife's citizenship follows, although she may have previously been an alien, and it makes no difference whether she is twenty-one years of age or not.[25] This rule is in line with the English law which provides that the nationality of the wife follows that of the husband and changes when his changes.[26] Neither is the wife precluded from citizenship though she may live at a distance from her husband for years and never even come to the United States.[27] A contrary opinion, however, has been expressed in Minnesota, holding that the wife must be a resident of the United States in the life-time of her husband.[28] But the cases cited as a basis for this opinion do not sustain the conclusion. In the one case the point is not decided on the merits and the second case was subsequently overruled.[29] The statute still contains a further and beneficent provision admitting to citizenship aliens of the age of twenty-one years or more who have been honorably discharged from the military service of the United States without declaring the preliminary intention.[30] And similar provisions are made entitling to citizenship, seamen who are foreigners, provided they have served or will serve three years aboard a merchant vessel in the service of the United States.[31] But it is to be observed that, while a declaration of intention, except in the special cases previously referred to, is necessary to naturalization, yet a mere declaration confers no right of inheritance for the reason that the naturalization is incomplete.[32]

[23] Leonard v. Grant, 6 Sawy. (U. S.) 603.
[24] Leonard v. Grant, 6 Sawy. (U. S.) 603.
[25] Renner v. Muller, 44 N. Y. Super. Ct. 535.
[26] 33 Vict. ch. 14.
[27] Headman v. Rose, 63 Ga. 458; Kane v. McCarthy, 63 N. C. 299.
[28] 1 Minn. Inst. 141.
[29] Burton v. Burton, 1 Keys (N. Y.), 350.
[30] Rev. Stat. U. S. Sec. 2166.
[31] Rev. St. U. S. Sec. 2174.
[32] McDaniel v. Richards, 1 McCord (S. C.), 187.

II. *How to be made Citizens.*—An alien who seeks admission to citizenship must declare under oath before a Circuit or a District Court of the United States or a district or Supreme Court of the Territories or a court of record of any court having a common law jurisdiction and a seal and a clerk, at least two years prior to his admission to citizenship, that it is his *bona fide* intention to become a citizen. He must further renounce all allegiance to any prince, potentate or State, and particularly and by name to the prince or State whereof he is at the time a subject or a citizen.[33] It has been held that the clerk of the Circuit Court of the United States has no authority to take from an alien a declaration of intention to become a citizen at the private residence of the party and for that purpose to carry the records of the court from the clerk's office to such residence.[34] Application for admission of an alien to citizenship may be made to any of the courts before which he might have made his preliminary declaration of intent and the acts of the courts admitting to citizenship are purely judicial.[35] State courts have a competent and constitutional power to naturalize, but State courts in admitting aliens to citizenship under naturalization laws act as United States.[36] The alien must prove that he has made the declaration required, proof of which is the record. He must have resided within the United States for five years at least and within the State or Territory where the court sits for one year and that during that time he has been a man of good morals and attached to the principles of our government, and he must be well disposed to the good order and happiness of the United States. The oath of the applicant shall in no case be allowed to prove his own residence.[37] An alien's residence cannot be established by affidavit but must be proved in court by competent witnesses. Nor are affidavits admissible to establish the alien's good moral character or his attachment to the principles of our government, though on these points his own oath is admissible. But the oath of the

[33] Rev. Stat. U. S. Sec. 2167.
[34] *In re* Langtry, 31 Fed. Rep. 879.
[35] Rev. Stat. U. S. Sec. 2165; McCarthy v. Marsh, 5 N. Y. 279.
[36] Matter of Christern, 43 N. Y. Super. Ct. 523; Matter of Ramsden, 13 How. Pr. 429; Spratt v. Spratt, 4 Pet. (U. S.) 406.
[37] Rev. Stat. U. S. Sec. 2165.

alien should be corroborated by other evidence.[38] Nor can an alien offer testimony for another alien to be naturalized.[39]

Where an alien, during residence in the United States has been convicted of perjury, he has not behaved as a man of good moral character so as to entitle him to admission to citizenship and even though he may have been pardoned it does not alter the case.[40] The judgment of the court granting naturalization is to be recorded and the record is conclusive evidence of all the facts therein recited. The alien then becomes entitled to all the privileges of a native born citizen, excepting the limitations prescribed by the federal constitution.[41] The judgment of the court to whom the power to grant naturalization is confided by the supreme power in the State, is conclusive as to the law and fact everywhere and upon all the world.[42] A record of all naturalization is kept by the court and a certificate of such record is the only evidence then admissible to prove the fact of an alien's naturalization. But in the absence of evidence of naturalization by court records, parol evidence is admissible to prove the fact.[43] No court has the power to declare, in an order naturalizing an alien, that such alien shall be held to be a citizen from a time preceding the order, and if it make such declaration its act is void and the alien becomes a citizen only from the time when such order was made.[44]

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[38] *In re*——7 Hill (N. Y.), 137.
[39] State v. Papen, 1 Brewst. (Pa.) 263.
[40] *In re* Spencer, 5 Sawy. (U. S.) 195.
[41] Osborn v. Bank of U. S., 9 Wheat. 738.
[42] People v. McGown, 77 Ill. 644.
[43] Matter of Desty, 8 Abb. N. C. 250; People v. McNally, 59 How. Pr. 500.
[44] Dryden v. Swinburne, 20 W. Va. 89.

BUILDING AND LOAN ASSOCIATIONS—REPRESENTATIONS BY SECRETARY — INTERPRETATION OF BY-LAWS.

SAWYER V. MENOMINEE LOAN & BLDG. ASS'N.

Supreme Court of Michigan, December 22, 1894.

A loan association may be compelled to accept such a sum in satisfaction of a mortgage given by one of its members, and held by it, as accords with the representations in reference to its by-laws, made by its secretary in his dealings with plaintiff at the time of making the loan. Grant and Hooker, JJ., dissenting.

LONG, J.: In September, 1888, complainant applied to the defendant association for a loan, and in order to procure it was obliged to subscribe for stock in the association. The taking of the stock and procuring the loan were all one transaction. James H. Walton was secretary of the association, and acted in the transaction in behalf of the defendant. Complainant claims that, before he subscribed for the stock, Walton, in setting forth the advantages to be gained by a borrower, among other things, represented that such borrower could pay a loan at any time at the end of any quarter, and could settle on the basis of the loan's being canceled in eight years, and at one-eighth thereof each year, taking the actual money loaned as a basis, and, so far as settlement was concerned, disregard the premium bid for the loan. The secretary explained that the association could do this because of the advantage it had in compounding interest monthly and receiving interest on premiums and installments on premiums, and that the right to settle on this basis was plainly guarantied by the by-laws. Complainant claims that, relying upon these representations, he did not examine the by-laws, but agreed to take a loan of $4,500, and subscribed for 45 shares of the capital stock of the association, having bid for such stock 22 1-2 per cent. premium. After subscribing for such stock and securing the loan, complainant claims that, relying upon the representations made by the secretary, he continued for 17 quarters to pay the installments on the stock and interest, when he decided to settle and pay up the loan and cancel the stock pursuant to the representations made by the secretary, and was then for the first time informed that there was no such by-law, whereupon he tendered the sum of $1,700, and demanded the cancellation of the stock, bonds, and mortgage given to secure the loan, which was refused. This bill was filed for the purpose of having the bonds and mortgage canceled upon the payment of the $1,700, which complainant claims is sufficient to discharge his indebtedness to the company under the by-laws as represented to him by the secretary. The testimony was taken in open court, and at its close the court filed a written opinion, which sets out substantially: That the complainant's object in joining the association was to secure the loan. That the certificate in the form used by the association was issued to him for the 45 shares, and on the same day of its issue was duly assigned to the defendant to secure in part the loan. That in the written application signed by complainant he agreed "to comply with the charter and the by-laws of your association." That he secured the loan for the advance on 45 shares of the stock at a premium of 22 1-2 per cent. That he filled out, signed, and executed the form of bond and mortgage in use by the defendant, which bond recited that he had become a stockholder of the association, and had subscribed to its charter and by-laws. That the mortgage contained the fol-

lowing condition: "That if the parties of the first part shall and do well and truly pay or cause to be paid to the said party of the second part, at his office in Menominee, the full sum of four thousand and five hundred dollars, payable in installments of twenty-two and 51-100 dollars on the first Tuesday of each and every month beginning on the first Tuesday of September, 1888, together with interest on the principal sum at the rate of eight per cent. per annum, payable in monthly installments of thirty dollars each, at the same place and time respectively, until the said shares of stock shall have attained the full value of one hundred dollars each, and shall pay all fines on said stock, or shall sooner pay said indebtedness under the provisions of the by-laws of said second party, according to a certain bond bearing even date herewith, executed by said Alvin L. Sawyer to the said party of the second part, then these presents and said bond shall cease and shall be null and void." The court recited that the amount actually received by complainant on the loan was $3,487.50; that he made payments for 17 quarters, or 51 monthly installments, of $52.50 each, denominated by said association as $22.50 installment and $30 interest; that December, 1892, when he sought to withdraw from the association, he had paid $2,677.50. The court stated the claims of complainant made in his bill: (1) That he was induced to join the association and make said loan by reason of certain false and fraudulent representations of its secretary and business manager; that it was contemplated from the first that he would want to settle at the end of about four years, and that the secretary represented to him that for the purpose of settlement after the first year a borrower could disregard the premium bid, and could for each year his loan continued deduct one-eighth from the amount of money actually received, and could cancel the loan by paying the balance thereof, disregarding the premium, and on the same basis and at the same rate at the end of any quarter year, so that at the end of four years the loan would be half paid up; that the secretary figured over the loan desired on the basis above specified, and showed that for the first four years the average cost of the use of the money would not exceed about 8 per cent.; and that the secretary said at the end of four years complainants could cancel the mortgage by paying one-half the amount of money actually received, and that the right was plainly guarantied to borrowers in the by-laws of the association. (2) That the by-laws are capable of the construction given them by the secretary, and complainant asks for such a construction. The court below says that upon a review of the testimony he found the representations were made substantially as claimed by complainant, but that he did not think any fraud was practiced by defendant or its agent, but that there was an honest belief on the part of the secretary that at the end of the four years one-half of the loan would, by the working scheme, be paid off; that both parties were bound to take notice of the law of this State under which the defendant association was formed, which constituted the charter of the defendant; that in his opinion the secretary believed in the truth of what he asserted, but that both he and the complainant were bound to know that the company could not be operated on such a basis without a violation of the charter and that if the complainant did not read the charter and by-laws it was his fault. The court further said: "It will not do for a man, in the absence of fraud, to enter into a contract, and, when called upon to respond to its obligations, say that he did not read it when he signed it or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. A contractor must stand by the words of his contract, and, if he will not read what he signs, he alone is responsible for his omission." A decree was entered in the court below, dismissing complainant's bill, and from which he appeals.

It is evident from all the testimony that complainant took the loan in good faith, and in full reliance upon the interpretation given by the secretary that the defendant company would and did construe the by-law as the secretary then construed it, and he made his contract in reliance upon such interpretation. If that interpretation had been adhered to by the company, he could have settled at any time. We think he is now entitled to have the contract construed in the light of the by-laws as they were represented to be, or that at least the defendant should receive its money, with interest at 7 per cent. from the time the loan was made. Whether such misrepresentations were intended or were mere matter of mistake, the complainant has been misled to his injury; and the law is well settled in this State that it is immaterial whether a false representation is made innocently or fraudulently if, by its means, the party is injured. Holcomb v. Noble, 69 Mich. 396, 37 N. W. Rep. 497; Totten v. Burhans, 91 Mich. 499, 51 N. W. Rep. 1119. We do not think that the rule laid down by the court below, that the complainant had the opportunity to find out what the by-law was, and therefore could not complain if he did not protect himself, can be sustained. The parties were not standing on an equal footing. The secretary represented the company, and the complainant might well rely upon the interpretation of the by-laws which the secretary gave. Complainant did not see the by-laws. They were not exhibited to him. The secretary claimed to know what interpretation the company put upon them, and the complainant chose to rely upon such representation. The rule laid down by Lord Chelmsford in Railway Co. v. Kisch, L. R. 2 H. L. 121, it seems to us, is specially applicable to the present case. It was there said: "When once it is established that there has been any fraudulent misrepresentation or willful concealment by which a person has been induced to enter into a contract, it is no answer to his claim to

be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, 'You, at least, who have stated what is untrue, or have concealed the truth, for the purpose of drawing me into a contract, cannot accuse me of a want of caution because I relied implicitly upon your fairness and honesty.'" In Mead v. Bunn, 32 N. Y. 275, the rule was also laid down that the omission of one of the parties to an agreement to make inquiries as to the truth of facts stated by the other cannot be imputed to him as negligence. In Bank v. Hunt, 76 Mo. 439, it was held that a person buying stock of a bank from the bank is entitled to rely upon assurances of an officer of the bank as to its financial condition, and, if already a stockholder, he is not bound to avail himself of his right of examining the books of the bank; and in Hough v. Richardson, 3 Story, 659, Fed. Cas. No. 6,722, it is said: "Where, in a treaty for the sale of property, the vendor makes material misrepresentations, by which the purchaser, having no knowledge, or means of knowledge, in relation thereto, is actually deceived to his injury, a court of equity will rescind the contract in pursuance thereof, although it does not contain misrepresentations; and it matters not, in such a case, whether the misrepresentations be the result of mistake or fraud." The misrepresentations was made in the present case by the secretary of the defendant, and the company has had the benefit of the loan to the injury of the complainant. Equity requires that the mistake be corrected, and the complainant relieved of any claims which defendant may have under the interpretation of the by-laws it now claims. The decree of the court below dismissing complainant's bill will be overruled, and a decree entered in this court authorizing him to pay the mortgage at present on the basis of the by-law as represented, unless the defendant shall elect within 30 days to take its moneys at the rate of 7 per cent. per annum from the time the loan was made, deducting payments made, as the complainant offers to do in his bill, but no interest will be computed from the date of the tender, as the tender was sufficient to meet the amount unpaid on the mortgage at that date. Complainant will recover costs of both courts.

NOTE.—We learn from the dissenting opinion, filed by Grant, J., concurred in by Hooker, J., that the circuit judge found as a fact in the principal case that the scheme as claimed by the plaintiff is not warranted by the charter and that the defendant could not carry on business under such a scheme. Section 10 of the Michigan act, in regard to buildingand loan associations, provides: "The borrower may repay the loan at any time, and in event of the repayment thereof before the expiration of the 8th year after · · · the date of issue of the series of stock in such association on which the loan may have been made, there shall be refunded to such borrower one-eighth of the premium paid for every year of said eight years then unexpired." Section 6 provides that "any stockholder wishing to withdraw from said corporation shall have the power to do so by giving 30 days' notice in writing at a stated meeting of his or her intention to withdraw when he or she shall be entitled to receive the amount paid in by him or her and such interest thereon or such proportion of the profits therein as the by-laws may determine." The circuit judge in his written opinion said "both parties are bound by these provisions. All members must participate equally in the profits. This is the fundamental law of the organization as provided by the statute. The plan contended for by the plaintiff by which an arbitrary amount of the loan was to be considered as paid every year, would be subversive of the scheme and hence illegal. Even if such were the agreement a court of equity would not adopt the agreement nor enforce it, when the agreed rule would produce a result contrary to the evident design of the legislature in creating building associations. The plan which it is claimed was presented by the secretary in its operation would have worked an injustice to other members and would have been inequitable and unfair." This conclusion, the dissenting judge claims, is fully justified. The rights of the complainant Sawyer, they say, must be determined from the standpoint of his relations to the defendant and its members. He voluntarily applied and became a member of the association. He was presumed to know the law, and whatever may be the rule where an officer of the company misstated the effect of the by-laws, the charter of the defendant is binding upon him. In that point of view, misrepresentations as to the effect or construction of the statute will not avail him. So, also, if Walton represented that there were by-laws which in point of fact were in conflict with the charter, this could not avail, for such by-laws would be void. It must be said that the authorities tend in some degree to sustain the position of the dissenting judge, though the question involved in the case is a close one. In Beach on Private Corporations, § 321, it is said: "While by-laws are not always binding upon strangers, a person who becomes a member of an association or company after the adoption of a by-law is not considered a stranger, and by joining the association he is deemed to give his assent thereto and be thereafter bound by the obligations which it may impose upon the members." Where a by-law has been properly passed every member's consent is conclusively presumed and his submission required. Endlich Bldg. Assoc., § 271; Bacon Ben. Soc., § 81 and note. One who becomes a member of an association is chargeable with knowledge of the provisions of its charter and by-laws and is bound by them. He cannot be ignorant of them, nor can he refuse obedience to them unless, indeed, they are illegal or require the performance of acts which the law forbids. By-laws not in themselves illegal and not requiring the performance of acts contrary to law must therefore be deemed binding upon all persons who become members. Bauer v. Sampson Lodge, 102 Ind. 262; Cole v. Iowa State Mutual, 18 Iowa, 425; Manning v. San Antonio Club, 63 Tex. 166; St. Mary's Soc. v. Burford's Adm., 70 Pa. St. 321; Fugine v. Mut. Soc. St. Joseph, 46 Vt. 568; Coleman v. Knights of Honor, 18 Mo. App. 189; People v. St. George Soc., 28 Mich. 261; Osceola Tribe v. Schmidt, 57 Md. 98; Hagerman v. The Ohio Building and Savings Association, 25 Ohio St. 186. Came v. Brigham, 39 Me. 38; Cummings v. Webster, 43 Me. 192. It has always been the settled law as to corporations generally that its members are presumed to know its by-laws (Inhabitants v. Morton, 25 Mo. 593; Buffalo v. Webster, 10 Wend. (N. Y.) 90; Frank v. Morrison, 58 Md 423); and it is no objection to a by-law that a member of a corporation had notice. Treadway v. Hamilton Ins.

Co., 29 Conn. 68. In Upton v. Tribilcock, 91 U. S. 45, the defense was that a subscription to the stock of a company was obtained by the fraudulent representation of the agent, that the stock was in part non-assessable. It was there said: "That the defendant did not read the charter and by-laws, if such was the fact, was his own fault. That a stockholder may relieve himself from his liability by proof that he was misinformed as to the effects of his contract when he made it would be a disastrous doctrine." The dissenting judge disclaims the position that there are not cases in which a stockholder will be entitled to relief against a corporation for false and fraudulent representations in selling the stock to him. Such was the case of Railway v. Kisch, L. R. 2 H. L. 99, cited by the majority of the court in the principal case. In that case a prospectus was issued by the directors of the company containing false and fraudulent representations in regard to its capital, upon the faith of which the defendant agreed to purchase some of its stock. But no such state of facts he claims exists in the present case. The whole difficulty arises upon the honest, but mistaken, construction of the by-laws placed upon them by the secretary of the company to one who applied for membership almost at the inception of the organization. It is not a rule of universal application that a party is entitled to rely upon the representations of another. When the plaintiff applied for membership he was bound to take notice of the charter and by-laws of the defendant

CORRESPONDENCE.

PRIORITY OF ATTACHMENT LIEN OVER UNRECORDED DEED IN KENTUCKY.

To the Editor of the Central Law Journal:

My attention has been called to an article in the CENTRAL LAW JOURNAL, vol. 40, page 25, entitled, "Priority of Attachment Liens over an Unrecorded Conveyance." I believe that your readers should be informed that the Kentucky cases cited in said article in support of its doctrines are old cases and either do not support the doctrines contended for in said articles or have long since been overruled, and that a very different doctrine has been well established in this State. In discussing that class of registry acts "in which protection is in express terms extended to creditors and subsequent purchasers for value, and without notice of the prior unregistered conveyance," the author of said article says: "In other States, creditors are treated with more consideration than purchasers and are accorded priority over the unregistered conveyance, regardless, not only of possession by the grantee, but of actual notice of his rights." In support of this assertion, the following cases, among others, are cited: Campbell v. Mosely, Litt. Sel. Cas. (Ky.), 358; Edwards v. Brinker, 9 Dana (Ky.), 69; Ring v. Gray, 6 B. Mon. (Ky.) 368: Helm v. Logan, 4 Bibb (Ky.), 78. Further on in said article we read that "In some cases 'creditors without notice' has been held to mean those without notice at the time of commencing proceedings, etc. · · · But other cases hold that if the creditor receive notice of the unregistered deed after the credit was given and the debt contracted, he has a right to try his speed with the grantee, etc. · · · This seems to be the better view." In support of this "better view," the author cites only Graham v. Samuel, 1 Dana (Ky.), 166, a case decided in 1833. Of the above mentioned cases Campbell v. Mosely is in conflict with the proposition in proof of which it is cited, and the others have long ago been overruled, so far as they sustain the doctrines asserted in said article. The view now well established in Kentucky is that an unrecorded conveyance (deed or mortgage) will in equity prevail over an attachment or execution lien, if notice (either to the creditor or the purchaser at his forced sale) is received before the enforcement of the said lien by sale. Morton v. Roberts (1836), 4 Dana, 258; Righter v. Forrester (1866), 1 Bush, 278; Low v. Whitney (1874), 10 Bush, 331; Baldwin v. Crow (1888), 86 Ky. 697. The argument of the court in these cases is that it is the object of the legislature, in the registry acts, to regulate the conveyance of the legal title only, and that while an unrecorded conveyance is not "good" (the word used in the statute) to convey the legal title, it is good to create an equity, which is equal to the equity of an attaching or execution creditor and, if, prior to it, will prevail. The levy of an execution creates a mere lien which may never be enforced; and the legal title to the property is never completed until a sale and conveyance. And, if the legal title is acquired with a notice of a pre-existent equity, it will be made to yield to the prior equity in a court of chancery. It is not my object to express an opinion, *pro* or *con*, as to the views advocated in said article, but merely to call attention to the fact that the Kentucky cases cited do not properly represent the present law in that State.

C. W. WELLS.

Owensboro, Ky.

QUASHING OF AN ATTACHMENT WRIT.

To the Editor of the Central Law Journal:

In a suit in *assumpsit*, with attachment in aid, lately pending in the Circuit Court of Cook County, the defendants pleaded the general issue, concluding: "And of this they put themselves upon the country." To this plea the attorneys for the plaintiffs added the usual *similiter:* "And the plaintiffs do the like." A plea in abatement to the attachment, denying the fraudulent disposition of property, etc., was also filed by each defendant, concluding: "And this he prays may be inquired of by the country, etc. Wherefore he prays judgment and that the said writ may be quashed, etc." The plaintiffs' attorneys likewise added to each of said pleas: "And the plaintiffs do the like." It is not often the plaintiffs and defendants are in such perfect accord as to the quashing of an attachment writ.

Chicago, Ill. EDWIN FELSENTHAL.

BOOK REVIEWS.

GARDNER'S REVIEW IN LAW AND EQUITY.

This book is especially designed for students who are making their final preparations for admission to the bar. It gives a clear and concise statement of the leading principles of those branches of the law which are taught in the law schools of the country, and which form the subjects of bar examinations. It is an octavo volume of over three hundred pages. Published by Baker Voorhis & Co. New York.

AMERICAN RAILROAD AND CORPORATION REPORTS, VOL. IX.

This, the latest of a series of reports now well and favorably known to the profession, contains many important cases with useful notes grouping all the authorities on the subject. We note particularly Lyon-

Thomas Hardware Co. v. Perry Stove Manufacturing Co., wherein the Supreme Court of Texas struggled with the question as to the right of insolvent corporation to prefer creditors; Phillips v. Mercantile National Bank, an exceedingly interesting decision by the Court of Appeals of New York on rights and liabilities of bank in matter of fraudulent checks; Newark Machine Co. v. Kenton Ins. Co., by the Supreme Court of Ohio, the note to which contains a collection of the recent decisions on the subject of fire insurance; Hedges v. Dixon County (Supreme Court of the United States), where recent decisions on subject of municipal bonds may be found. Published by E. B. Myers & Co. Chicago.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION — Claim against Estate — Limitations.—Under Code, § 2408, providing that claims against a decedent's estate shall be filed with the clerk and 10 days' notice of the hearing thereof served on the executor, an action on a claim against the estate is commenced when the claim is filed, so as to prevent the running of the statute of limitations.—FRITZ v. FRITZ, Iowa, 61 N. W. Rep. 169.

2. ADMINISTRATION — Order of Distribution—Revocation.—On a showing that legatees and devisees under a will, who levied at a great distance from the property, and were ignorant of its value, were induced, by the fraudulent representations of the administrator, to convey to him the whole estate for one third its value, the county court has jurisdiction to revoke its previous order of final distribution, approving the sale to defendant, and require him to account.—CREAMER v. INGALLS, Wis., 61 N. W. Rep. 82.

3. ADVERSE POSSESSION — Boundary Line—Estoppel.—For 30 years plaintiff made no claim to land south of a certain line, during which time defendant, the adjoining landowner, claimed up to such line, as plaintiff knew. A fence had been built along only a part of the line, and the unincloased land consisted of timber land. The only evidence of specific acts of ownership of the latter land by defendant was the cutting of firewood therefrom 20 years before suit, and the cutting of hickory wood for sale 16 years before: Held, defendant did not obtain title to the unincloased land by adverse possession.—GOLTERMAN v. SCHIERMEIER, Mo., 28 S. W. Rep. 616.

4. ALTERATION OF NOTE—Burden of Proof.—The burden of proving that a note was altered after delivery is on the person who claims that the alteration was made.—FARMERS' LOAN & TRUST CO. v. OLSON, Iowa, 61 N. W. Rep. 199.

5 APPEAL BOND—Sufficiency.—An appeal bond which varies from the language of Rev. St. 1889, § 2249, in naming "The St. Louis Court of Appeals" as the court to which appellant will prosecute his appeal, instead of "the appellate court," and binding him to comply with its decision instead of that of "any appellate court," is not sufficient.—AMERICAN BREWING CO. v. TALBOT, Mo., 28 S. W. Rep. 585.

6. APPEAL—Dismissal—Reinstatement.—The appeals in the above entitled case having been dismissed for failure to file the transcripts within the time prescribed by rule, the courts holds, on motion to reinstate such appeals, that appellants have not excused their default.—WALTER A. WOOD HARVESTER CO. v. HEIDEL, N. Dak., 61 N. W. Rep. 155.

7. APPEAL—Reversal on Merits.—A manifestly erroneous judgment, though predicated upon special findings of fact, made by the lower court in accordance with an agreement between the parties, and excepted to by neither of them at the trial, will be reversed on writ of error, in accordance with Rev. St. 1889, § 2304, which requires the Supreme Court to "examine the record," and give such judgment as should have been given below.—SOUTH ST. JOSEPH LAND CO. v. BRETZ, Mo., 28 S. W. Rep. 656.

8. ASSIGNMENT FOR CREDITORS—Validity.—An assignment for the benefit of creditors, conveying all of the assignor's property except such as is exempt from forced sale, is valid.—KING v. HARGADINE MCKITTRICK DRY GOODS CO., Ark., 28 S. W. Rep. 514.

9. ASSIGNMENT FOR BENEFIT OF CREDITORS—Fraudulent Preference.—Where a debtor, while in a condition of hopeless insolvency, brought on by a course systematic fraud practiced with the intention of failing in business, assigns to a creditor a claim against a solvent customer, the transaction operates as an assignment of all the debtor's property for the benefit of all the creditors.—OUERBACKER v. H. B. CLAFLIN CO., Ky., 28 S. W. Rep. 506.

10. ASSIGNMENT FOR BENEFIT OF CREDITORS—Set-off.—The defendant in an action by the assignee to recover money due to an insolvent banking corporation may set off against the amount owing by him to the bank an indebtedness of the latter to him.—SALLADIN v. MITCHELL, Neb., 61 N. W. Rep. 127.

11. ATTACHMENT — Equitable Interest in Land.—A levy of an order of attachment on real property by posting a copy thereof is not effective, as against third parties, when there is an occupant of such property.—SHOEMAKER v. HARVEY, Neb., 61 N. W. Rep. 109.

12. ATTORNEY AND CLIENT—Services—Cross examination.—In the absence of an express contract, a party to an action who requests an attorney at law to appear and answer therein becomes liable to pay a reasonable compensation therefor, and when such attorney has testified in his own behalf in an action to recover for his services, that the same are reasonably worth a specified amount, it is error to sustain objections to questions on cross-examination relative to the character and extent of such services, and which tend to elicit statements from the witness designed to show that by reason of his carelessness or unskilfullness the suit was lost, and that his services were worth less than the amount claimed, or were entirely valueless.—

CRANMER v. BUILDING & LOAN ASS'N OF DAKOTA, S. Dak., 61 N. W. Rep. 35.

13. BANKS—Payment of Check to Unauthorized Person.—Where the general fiscal agent of a building and loan association, who, while not by its by laws the custodian of its funds, was the custodian of its securities, and authorized to make its collections and transact its banking business, deposits a check to the order of the association to his own credit, the bank on which the check was drawn is not liable for his misapplication of the money, though by the by laws of the association the treasurer was the only person who could pay out its funds.—GATE CITY BLDG. & LOAN ASS'N v. NATIONAL BANK OF COMMERCE, Mo., 28 S. W. Rep. 633.

14. BOND—Contractor's Bond—Materal Man.—Where a contractor agrees with the owner to furnish all the material for a building, and gives a bond therefor, a material man who sells the contractor such material cannot sue on the bond for balance due therefor.—M. T. JONES LUMBER CO. v. VILLEGAS, Tex., 28 S. W. Rep. 558.

15. CARRIERS—Live Stock — Shipper's Duty—Feed and Water.—Where cattle are shipped under a contract whereby the shipper agrees to feed and water them, the fact that it is necessary to unload the cattle two hours after shipment, owing to a wreck on the road caused by the carrier's negligence, thereby causing a delay of 20 hours, does not authorize the shipper to rescind the special shipment contract, and abandon the cattle, and so cast the duty of feeding and watering the same on the carrier, when the injury resulting from the delay could be almost entirely averted by his continuing to attend to them.—FT. WORTH & D. C. RY. CO. v. DAGGETT, Tex., 28 S. W. Rep. 525.

16. CARRIERS OF PASSENGERS — Contributory Negligence.—A passenger who unnecessarily and negligently expose himself to danger while alighting from a train is guilty of contributory negligence, even though he does not know of the danger to which he is exposed.—ILLINOIS CENT. R. CO. v. DAVIDSON, U. S. C. C. of App., 64 Fed. Rep. 301.

17. CHATTEL MORTGAGE — Action by Chattel Mortgagee.—A trustee claiming damages for the negligent killing of a mule covered by the deed of trust to him must show that the grantor in the deed owned the mule when the deed was executed.—LITTLE ROCK & M. RY. CO. v. SPARKMAN, Ark., 28 S. W. Rep. 509.

18. CHATTEL MORTGAGE—Sale by Mortgagor.—Where a chattel mortgage provides that, if an attempt is made to sell the property or to remove it from the county where it is situated, the mortgagee may sell it, he may seize the property if it is sold by the mortgagor without his consent.—NATIONAL BANK OF COMMERCE OF KANSAS CITY v. MORRIS, Mo., 28 S. W. Rep. 602.

19. CONSPIRACY—Pleading.—A complaint in an action for criminal conspiracy which alleges that defendants were members of a brewers' association formed to compel retailers to pay accounts due such members, and that they combined to coerce plaintiff to pay a certain sum falsely alleged to be owing to a member, and that, by notifying all such members that plaintiff was so indebted, they prevented him from obtaining a supply of liquor and from carrying on his business, which was thereby wholly destroyed, is insufficient as not alleging absolutely that plaintiff did not owe such sum.—SCHULTEN v. BAVARIAN BREWING CO., Ky., 28 S. W. Rep 504.

20. CONSTITUTIONAL LAW—Applicability to one City Only.—Act April 23, 1891, providing for the division of cities containing 300,000 inhabitants into 14 districts, to be fixed by the majority of the judges of the Probate Court, Criminal Court, Criminal Court of Correction and the Circuit Court, and for the election of justice of the peace in each district, though it was intended to apply only to St. Louis, is constitutional.—STATE v. HIGGINS, Mo., 28 S. W. Rep. 638.

21. CONSTITUTIONAL LAW—Competency of Jurors.—Saginaw City Charter, § 8, tit. 15, which provides that jurors must be qualified electors, and people of fair character and sound mind, freeholders in the city, and understanding English, is not in conflict with the provisions of the constitution that in condemnation proceedings the issues shall be passed on by "a jury of freeholders."—CITY OF SAGINAW v. CAMPAU, Mich., 61 N. W. Rep. 65.

22. CONTRACT AS TO REALTY— Statute of Frauds.—A parol contract entered into between B and D, by which they mutually agree to jointly purchase certain real property, and to contribute and pay an equal amount therefor, and to share equally in the profit or loss arising from a resale, is not an agreement for the sale of real property contemplated by section 3544 of the Complied Laws, which requires the same, or some memorandum or note thereof, to be in writing, and subscribed by the party to be charged; but the same is held to be an agreement in the nature of a special partnership, for the purpose of dealing in a particular piece of real estate, and not within the statute of frauds.—DAVENPORT v. BUCHANAN, S. Dak., 61 N. W. Rep. 47.

23. CONTRACT—Construction.—A condition, in a contract to purchase land, that a manufacturing company "transfer" its "works" to certain land, does not require that the identical buildings and machinery be removed.—HANNA v. SOUTH ST. JOSEPH LAND CO., Mo., 28 S. W. Rep. 652.

24. CORPORATION—Officers— Compensation for Services.—When a president and director of a corporation, for whom no salary is provided, of his own accord renders services to advance its interests, being a large owner of its stock and of the stock of other corporations which would be benefited by its prosperity, without expectation on his part of compensation, or knowledge on that of the corporation that he expected payment, he cannot recover therefor or for personal expenses connected therewith for which he had no purpose to charge.—MCMULLEN v. RITCHIE, U. S. C. C. (Ohio), 64 Fed. Rep. 253.

25. CORPORATIONS—Right to Hold Real Estate.—The right of a corporation to hold title to real estate, or to purchase and hold a lien thereon, cannot be questioned collaterally, but can only be attacked in a direct proceeding instituted for the purpose. Such purchase and holding are not void, but are voidable, and none but the sovereign can object.—WATTS v. GANTT, Neb., 61 N. W. Rep. 104.

26. COUNTY CLERK—Contempt.—When, by an order of a district judge, a county clerk has been required to place upon official and sample ballots the name of a candidate, and to make due return of his compliance at a time fixed, a failure to comply may be punished as being in contempt of the authority of such judge.—MCALEESE v. STATE, Neb., 61 N. W. Rep. 88.

27. CRIMINAL EVIDENCE — Homicide.—On trial for murder, defendant, who was the only eye-witness, testified that he was on his way to visit a relative, and had taken a shot gun along to kill squirrels, when deceased, who was a constable, and had a summons to serve on him, without stating his name or business, ordered defendant to halt, and lay down his gun, and, on defendant's non-compliance, drew a pistol, and that defendant, believing he was going to shoot, fired and killed him: Held, the evidence of the wife of deceased that he did not have that particular pistol with him was incompetent.—PARKER v. COMMONWEALTH, Ky., 28 S. W. Rep. 500.

28. CRIMINAL EVIDENCE—Murder—Res Gestæ.—When a witness testified that deceased procured a pistol and followed defendant, a statement by deceased to the effect that defendant had better go, or defendant would whip or kill him, was admissible as a part of the *res gestæ*.—GIBSON v. STATE, Miss., 16 South. Rep. 298.

29. CRIMINAL EVIDENCE — Rape.—Testimony by the father of prosecutrix that she had told him that de-

fendant had had intercourse with her without her consent is not within the rule excluding evidence of the particulars of a compiaint made shortly after the commission of the offense.—STATE v. COOKS, Iowa, 61 N. W. Rep. 185.

30. CRIMINAL LAW—Bail.—A recognizance for an appeal from a conviction for a misdemeanor before a justice of the peace is invalid if the court where and before which the prisoner is to personally appear is not stated in the recognizance.—PIIL v. STATE, Neb., 61 N. W. Rep. 96.

31. CRIMINAL LAW — Enticing away Servant.—On a trial for willfully interfering with and enticing away a servant while under contract for a specific time, under Code 1892, § 1068, the mere employment of the servant after he had left his former master is not sufficient to sustain a conviction.—JACKSON v. STATE, Miss., 16 South. Rep. 299.

32. CRIMINAL LAW — Homicide — Self-defense.—The fact that a person, by nailing up a fence, which he had a right to do, thereby provokes a difficulty, does not deprive such person, in case he kills another in the disturbance, from defending on the plea of self-defense.—GILCREASE v. STATE, Tex., 28 S. W. Rep. 531.

33. CRIMINAL LAW—Homicide—Self-defense.—The fact that one going in good faith to work on his own land may have reason to believe his presence there will be offensive to another does not prevent him, if he kills such person on being attacked by him, from pleading self defense. — MELRAINEY v. STATE, Tex., 28 S. W. Rep. 537.

34. CRIMINAL LAW—Larceny—Intent.—A person who borrows a horse, and trades it to another person, and then takes the horse from such person, intending to restore it to the owner, does not commit larceny in taking it from such person, as the intention to deprive the owner of the property is wanting.—GOOCH v. STATE, Ark., 28 S. W. Rep. 510.

35. CRIMINAL LAW—Larceny—Verdict.—A verdict in the following form: "We, the jury in the above entitled cause, duly impaneled and sworn, do find the defendant, James McCormick, guilty as he stands charged. Amount, estimated, of stolen property, $95. I. A. Baker, Foreman,"—held an estimate only, and not an ascertainment of the value of the property within the meaning of the statute.—MCCORMICK v. STATE, Neb., 61 N. W. Rep. 99.

36. CRIMINAL LAW — Swindling. — A conviction for swindling is improper where the pretense, device, or representation is not proved as alleged in the indictment.—PECKHAM v. STATE, Tex., 28 S. W. Rep. 532.

37. CRIMINAL PRACTICE—Charging Separate Offenses —Embezzlement.—An indictment which contains two counts against defendant for embezzling and converting money belonging to a city, and a third count stating that defendant, with intent to cheat the city, failed and emitted to pay over to his successors in office certain funds of the city, and embezzled and converted such funds to his own use, and, in closing, states that the offenses in the three counts are the same, charges only embezzlement.—STATE v. RAPLEY, Ark., 28 S. W. Rep. 508.

38. CRIMINAL PRACTICE — Indictment. — Where the body of the indictment sets out the offense of breaking and entering a building in which merchandise, etc., were stored, with intent fo commit larceny therein, an allegation in the caption that defendant is accused of "burglary" is immaterial, and therefore it is not necessary to allege that the offense was committed in the nighttime.—STATE v. GILLETT, Iowa, 61 N. W. Rep. 169.

39. CRIMINAL PRACTICE—Misdemeanors—Accessories. —In misdemeanors there are no accessories. Those whose conduct is such that it would constitute them accessories before the fact if the principal offense were a felony, are, if it be a misdemeanor, guilty as principals.—WAGNER v. STATE, Neb., 61 N. W. Rep. 85.

40. CRIMINAL TRIAL — Taking Newspapers to Jury Room.—Under Code, § 4453, providing that the jury may take with them notes of the testimony taken by themselves, but none taken by any other person, the taking into the jury room, and the perusal by members of the jury, of newspapers containing reports of the evidence and the arguments of counsel, and praising the arguments for the State, and criticising in general, the failure of courts to bring criminals to justice, is ground for reversal.—STATE v. WALTON, Iowa, 61 N. W. Rep. 179.

41. CRIMINAL TRIAL — Witness—Intoxication.—In a murder case, where there is evidence that deceased, whose dying declarations were introduced by the State, was an habitual drunkard, and it appears that he received the injuries of which he died while intoxicated, and while he and defendant were alone, it is error to charge that, if a witness gives evidence of an event which occurred while he was intoxicated, such intoxication should be considered as a circumstance "not affecting his credibility, but the probability of his correctly remembering what transpired."—STATE v. NOLAN, Iowa, 61 N. W. Rep. 181.

42. DEED.—A deed conveyed, in terms, "all that certain real and personal property, to-wit, my right, title and interest in and to a" certain tract of land (describing it), "to have and to hold the above-described premises," unto the grantees and their heirs, forever: Held, that the deed conveyed the land itself, and was not a mere quitclaim deed.—LAUGHLIN v. TIPS, Tex., 28 S. W. Rep. 551.

43. DEED—Contingent Remainder.—A remainder contingent on the death of the life tenant before the remainder-man may be conveyed by the latter.—BROWN v. FULKERSON, Mo., 28 S. W. Rep. 632.

44. DECEIT — Fraudulent Representations— Inducement.—In an action to rescind a contract for the sale of stock in a corporation because of fraudulent representations inducing the contract, the representation proved was that a report of the secretary of the corporation showed that it was earning a profit of 2 per cent. per month. The report referred to did show what was represented, but the report was false, and the defendant knew that it was false: Held, that the defendant thereby adopted the report as his own statement, and was responsible to the same extent as if he had represented the profit to be in fact as it was shown by the report.—HOLTRY v. FOLEY, Neb., 61 N. W. Rep. 120.

45. DIVORCE — Modification of Decree.—By the provisions of sections 2583, 2584, Comp. Laws, power is conferred upon the courts to modify or vacate and set aside that part of a decree of divorce which provides for the custody, support, and maintenance of the minor children of the parties, when the changed condition and circumstances of the parties to the decree require such modification or vacation of the same.—GREENLEAF v. GREENLEAF, S. Dak., 61 N. W. Rep. 42.

46. EJECTMENT—Improvements.—In the absence of evidence to show a waiver by plaintiff of the requirement, the defendant, in proceedings to recover for improvements made in good faith by an occupying claimant against whom ejectment has been successfully brought, must elect to take the value of the land aside from the improvements, relinquishing title and possession to the plaintiff, by answer and before trial, as provided by Rev. St. 1889, § 4648.—COX v. MCDIVIT, Mo., 28 S. W. Rep. 597.

47. ELECTIONS AND VOTERS—Location of Precincts.— The fact that in violation of Rev. Stat. art. 1664, providing that, in incorporated cities each ward shall constitute a voting precinct, precincts were laid out without regard to the wards, does not render the elections void.—EX PARTE WHITE, Tex., 28 S. W. Rep. 542.

48. EMINENT DOMAIN— Damages — Evidence.—In an action for damages caused by grading a street adjacent to plaintiff's lot, evidence of what lots in the same locality sold for at that time is admissible to show the value of plaintiff's lot prior to grading the street.—MARKOWITZ v. KANSAS CITY, Mo., 28 S. W. Rep. 642.

49. EMPLOYER AND EMPLOYEE — Discharge — Damages.—Where a contract of employment provides that it may be terminated by the employer on one week's notice, the employee is entitled to only one week's salary as damages on refusal of the former to continue his employment.—DERBY v. BOARD OF EDUCATION OF CITY OF EAST SAGINAW, Mich., 61 N. W. Rep. 61.

50. EMPLOYER AND EMPLOYEE—Wages—Payment in Money.—A mining company paid its employees once each month, in lawful money, for the past month's labor, and at any time during the month, upon their application, issued checks to them payable in merchandise at the company's store. The amount of checks so issued to each man was deducted from his wages on every pay day, and he was paid the balance in cash, but no money was paid for outstanding checks: Held, that such arrangement was not in violation of Const. § 244, and St. Ky. § 1350, providing that wage earners shall be paid for their labor in lawful money.—AVENT BEATTYVILLE COAL CO. v. COMMONWEALTH, Ky., 28 S. W. Rep. 502.

51. ESTOPPEL BY WAIVER.—Knowledge of the existence of a right or defense, and the intention to relinquish it, must concur in order to estop a party by waiver.—HAMILTON v. HOME FIRE INS. CO. OF OMAHA, Neb., 61 N. W. Rep. 93.

52. ESTOPEL— What Constitutes. — Defendant in an action to establish a boundary is not estopped from denying the location as claimed by plaintiff because a surveyor, in the presence of defendant, ran the line, in accordance with a deed to defendant, as claimed by plaintiff.— LOVELACE v. CARPENTER, N. Car., 20 S. E. Rep. 511.

53. EVIDENCE—Books of Account.—A book in which one person sets down the total amount of logs scaled from memoranda furnished him by another person, who did the work, is not admissible to prove the amount of logs scaled unless supplemented by the testimony of the person furnishing original *data*.—CHICAGO LUMBERING CO. v. HEWITT, U. S. C. C. of App., 64 Fed. Rep. 314.

54. EVIDENCE — Mortgage.—The admissions of a person, shortly before the execution to him of a mortgage claimed by the mortgagor's creditors to be fraudulent, that the mortgagors, who were his children, owed him nothing, and that the moneys which he had let them have were given to them, are admissible against him.—BREATHWIT v. BANK OF FORDYCE, Ark., 28 S. W. Rep. 511.

55. EVIDENCE — Value of Attorney's Services.—It is not error to admit an attorney of 20 years' practice to testify as to the value of legal services with which he is shown to be familiar, although he has not practiced in the county or State where such services were rendered, but in an adjoining State; there being nothing tending to show that the value of such services was not the same in both places.—FRYE v. FERGUSON, S. Dak., 61 N. W. Rep. 161.

56. EXECUTION—Exemptions.—A piano is not within How. St. § 7686, subd. 7, exempting to each householder "household goods, furniture, and utensils."—KEHL v. DUNN, Mich., 61 N. W. Rep. 71.

57. FEDERAL COURTS — Contest of Wills.—Federal Courts have no jurisdiction of a direct action to cancel a will.—OAKLEY v. TAYLOR, U. S. C. C. (Mo.), 64 Fed. Rep. 245.

58. FEDERAL COURTS—Diverse Citizenship—Habeas Corpus.—A petition for a writ of *habeas corpus* by a citizen of one State, seeking release from illegal restraint by a citizen of another State, is a suit or controversy between such parties; and the Circuit Court has jurisdiction, upon the ground of diverse citizenship, to issue the writ and determine such controversy, where the question involved is that of the petitioner's legal right to a discharge from restraint, and not one of discretion as to the place or character thereof.—KING v. MCLEAN ASYLUM, ETC., U. S. C. C. of App., 64 Fed. Rep. 331.

59. FEDERAL COURTS—Interstate Commerce.—A suit by which a railroad company engaged in interstate commerce seeks to restrain other railroad companies, having relations with it in such commerce, from refusing it the rights and privileges accorded it by law, as an agency in such commerce, is one involving a federal question, since it seeks to enforce rights secured by the interstate commerce act.—EX PARTE LENNON, U. S. C. C. of App., 64 Fed. Rep. 320.

60. FEDERAL COURT—Quieting Title.—A United States Circuit Court has jurisdiction of a suit to remove a cloud from a title to land situated in the district where the suit is brought, though defendant is a citizen of another State, under Rev. St. § 738, and Act 1875, § 8.—DICK v. FORAKER, U. S. S. C., 15 S. C. Rep. 124.

61. FEDERAL COURTS—Review of Decision of State Court.—A Federal Court cannot entertain jurisdiction of a bill of review seeking a rehearing of a cause in a State Court.—GRAVER v. FAUROT, U. S. C. C. (Ill.), 64 Fed. Rep. 241.

62. FEDERAL OFFENSE—National Banks—False Certification of Checks.—An indictment under Act July 12, 1882, ch. 290, § 13, amendatory of Rev. St. § 5208, which makes it a misdemeanor for any officer of a national bank to "certify any check" drawn by one who did not then have on deposit sufficient money to meet the same, need not allege delivery of the check by the bank after the certification.—POTTER v. UNITED STATES, U. S. S. C., 15 S. C. Rep. 144.

63. FRAUDULENT CONVEYANCE — Limitations. — The record of a deed fraudulent as to creditors is notice to them of the fraudulent character of the deed, so that the statute of limitations begins to run therefrom.—SIMS v. GRAY, Iowa, 61 N. W. Rep. 171.

64. FRAUDULENT CONVEYANCES—Use of Property by Grantor.—Conduct of the beneficiary of a deed of trust on "all the property used or acquired in carrying on" a tannery, in permitting the grantor to buy, sell, and ship the leather, etc., in his own name, vitiates the deed, as against creditors of the grantor.—BANK OF IUKA v. DOAN, Miss., 16 South. Rep. 805.

65. FRAUDULENT CONVEYANCE—What Constitutes.—The sale by an insolvent debtor to an innocent purchaser of certain horses, followed by an immediate change of possession, with an agreement that the vendor should resell said horses for the vendee, and receive for his services in so doing the balance of the proceeds of such sales after deducting the amount of the purchase price and a certain *bonus* for the vendee, was not fraudulent as to said insolvents' creditors.—HILL v. TAYLOR, Mo., 28 S. W. Rep. 599.

66. GARNISHMENT—Money Due from Insurance Company.—The claim of an assured against a fire insurance company cannot be garnished before proofs of claim have been filed with the company, and before the time has elapsed within which, by the terms of the policy, the company may, at its option, replace the goods destroyed.—DOWLING v. LANCASHIRE INS. CO., Wis., 61 N. W. Rep. 76.

67. GUARANTY—Release of Guarantor.—A guarantor of the payment of goods furnished a merchant is released by a delay of three years in notifying him of default.—MYERS v. REEDY, N. Car., 20 S. E. Rep. 521.

68. HABEAS CORPUS—Jurisdiction—Petition.—A petition for a writ of *habeas corpus*, which merely alleges that petitioner is restrained in violation of the constitution and laws of the United States, and is illegally imprisoned without due process of law, but does not set out in detail anything touched by the federal laws or constitution, does not state facts giving the Circuit Court jurisdiction.—KING v. MCLEAN ASYLUM, ETC., U. S. C. C. of App., 64 Fed. Rep. 325.

69. HIGHWAY—Damages for Vacation.—Code, § 946, relating to the establishment of public highways by boards of supervisors, and providing that the board "may make such establishment, vacation, or alteration conditioned upon the payment in whole or in part, of the damages awarded, or expenses in relation thereto," does not contemplate damages for vacation

of a public highway.—GROVE v. ALLEN, Iowa, 61 N. W. Rep. 175.

70. HOMESTEAD—Vendor's Lien.—One who furnishes the money used in discharging a vendor's lien is subrogated to the rights of the original lienholders as against the vendee's homestead rights only in case the money is used in satisfying the original lien for the purchase price.—KALLMAN v. LUDENECKER, Tex., 28 S. W. Rep. 579.

71. INJUNCTION—Ordinance—Regulation of Burials.—Injunction will lie at the instance of a cemetery association to enjoin the enforcement of an invalid ordinance making it a "misdemeanor" for any one to bury any human bodies in certain territory, as it particularly renders valueless the property of the association.—CITY OF AUSTIN v. AUSTIN CITY CEMETERY ASS'N, Tex., 28 S. W. Rep. 528.

72. INJUNCTION—Petition.—A petition for an injunction is not sufficient, where it states conclusions, and not the facts upon which such conclusions are based, or where the acts, the doing or threatening to do which it is sought to enjoin, are not averred but must be supplied, or appear only by inference.—BLAKESLEE v. MISSOURI PAC. R. CO., Neb., 61 N. W. Rep. 118.

73. INSURANCE— Arbitration. — An insurance policy required, in event of a disagreement as to the amount of loss, an appraisement. On demand of the insured, made without giving the insurer a reasonable time to accept the proofs of loss, appraisers were appointed. No steps were taken looking to an adjustment: Held, that the insurer could not claim that the appointment was premature. — BROCK v. DWELLING HOUSE INS. CO., Mich., 61 N. W. Rep. 67.

74. INSURANCE— Conditions — Waiver.—A provision of an insurance policy, requiring consent for additional insurance to be indorsed on the policy, may be orally waived by an agent of the insurer.—LIVERPOOL & LONDON & GLOBE INS. CO. v. SHEFFY, Miss., 16 South. Rep. 307.

75. INSURANCE POLICY—Breach of Condition.—A fire insurance policy provided that it should be void if any change took place in the interest of the insured, whether by voluntary act of the insured or otherwise: Held, an executory agreement to convey the insured premises, under which the vendee took possession, and paid a part of the purchase price, is a breach of this condition, and rendered the policy void. — GIBB v. FIRE INS. CO. OF THE COUNTY OF PHILADELPHIA, Minn., 61 N. W. Rep. 137.

76. INTOXICATING LIQUOR—Sale.—On a trial for selling intoxicating liquor it appeared that defendant, as agent of a liquor dealer in Minnesota, had taken orders for liquor to be delivered in Iowa. The orders were transmitted to such dealer, and, if approved, the liquor was shipped, defendant collecting the price. Defendant had no place of business in Iowa, and had no interest in the business or in the liquor: Held, that the sales took place in Minnesota, and that the court properly directed a verdict for defendant.—STATE v. COLBY, Iowa, 61 N. W. Rep. 187.

77. JUDGMENT LIEN — Indexing .— A judgment rendered and entered against two defendants jointly, but indexed as to only one of them, creates a lien on such defendant's property.—BLUM v. KEYSER, Tex., 28 S. W. Rep. 561.

78. LARCENY.—Defendant's buggy was destroyed by an electric car, and the superintendent of the car company procured a buggy belonging to a third person for defendant to use. The owner of the buggy subsequently demanded the buggy of defendant, who promised to return it but afterwards concealed it: Held, that defendant, having acquired possession lawfully, was not guilty of larceny. — PEOPLE v. TAUGHER, Mich., 61 N. W. Rep 66.

79. LIBEL—Malice.—In an action for libel, in charging that plaintiff falsely claimed to represent defendants in selling goods, where there is evidence that plaintiff did state that he was defendant's representative, defendants may, to show the extent of the circulation of plaintiff's statements, and to rebut the inference of malice in making the charge, prove that a number of persons came to their office and stated that they had heard that plaintiff was selling goods for them.—ARNOLL v. JEWETT, Mo., 27 S. W. Rep. 614.

80. LIBEL — Words Imputing Crime.—Any language the nature and obvious meaning of which is to impute to a person the commission of a crime, or to subject him to public ridicule ignominy, or disgrace, is actionable *per se*.—WORLD PUB. CO. v. MULLEN, Neb., 61 N. W. Rep. 108.

81. LIFE INSURANCE — Policy—Modification.—Where an insurance company modifies a life policy by an agreement "that all restrictions of travel, occupation, or residence expressed in the original policy" shall be waived, and further agrees that from that time the policy shall be "incontestable," and that when the policy became a claim "the amount of insurance" shall be paid on approval of the proof of loss, the provision in the orig nal policy that in case of death by suicide the company shall be liable only for the "net value of the policy" no longer remains in force.—SIMPSON v. LIFE INS. CO. OF VIRGINIA, N. Car., 20 S. E. Rep. 517.

82. LIMITATIONS—Suspension—New Promise.—A remark by the executor of a debtor that a creditor need not hire a lawyer to prosecute his claim, as he (the executor) would do whatever the judge said, will not revive the claim when it was at the time of the remark barred by the statute.—GRADY v. WILSON, N. Car., 20 S. E. Rep. 518.

83. MALICIOUS PROSECUTION—Damages.—An instruction which, in effect, left the determination of general damages resulting from malicious prosecution to be determined by the jury, guided by their opinions and judgment as reasonable men, held proper, where no evidence of special damages had been offered.—ELLISON v. BROWN, Neb., 61 N. W. Rep. 97.

84. MANDAMUS—Judgment.—The final determination of the court in *mandamus* proceedings, by which peremptory writ is adjudged and awarded upon the affidavit of plaintiff and the answer of the defendant, is judgment.—HARTY v. PURINTON, S. Dak., 158 N. W. Rep. 158.

85. MARRIED WOMAN — Payment under Invalid Contract.—Though a married woman cannot bind herself by a contract to purchase goods, she cannot recover money paid by her in part performance of such a contract.—PITTS v. ELSER, Tex., 28 S. W. Rep. 518.

86. MASTER AND SERVANT—Fellow-servants.—Failure to have sand in the dome of a locomotive is not failure to provide a safe appliance, but, as regards a brakeman injured thereby while coupling cars, the negligence of the engineer or fireman whose duty it is to fill it, and these are his fellow-servants in the same department of labor.—ILLINOIS CENT. R. CO., v. JONES, Miss., 16 South. Rep. 300.

87. MASTER AND SERVANT — Negligence—Dangerous Machinery.—Where a servant is injured by the careless use by his fellow servants of a machine which is not necessarily dangerous if properly used, and which is not furnished by the master, but by a fellow-servant, against the master's orders, the master is not liable therefor.—CALLAWAY v. ALLEN, U. S. C. C. of App., 64 Fed. Rep. 297.

88. MECHANIC'S LIEN—Waiver.—The right to a mechanic's lien, or to enforce it by the proper action if filed, is not lost nor waived by the acceptance of collateral security for the payment of the account for material furnished or labor performed, unless such was the intention of the parties in the giving and taking of such security.—BAKER v ABRAMS, Neb., 61 N. W. Rep. 91.

89. MORTGAGE — Failure to Record.—The effect of Comp. Laws sections 3293, 3294, is to make an unrecorded assignment of a mortgage void as to subsequent purchasers or incumbrancers of the mortgaged premises in good faith and for a valuable considera-

tion, whose conveyances are first recorded.—MERRILL v. LUCE, S. Dak., 61 N. W. Rep. 43.

90. MORTGAGE OF CROP — Validity.—The owner of land cannot mortgage a future crop to be raised thereon, as against a tenant raising the crop on shares under a lease subsequent to the mortgage.—KNAEBEL v. WILSON, Iowa, 61 N. W. Rep. 178.

91. MORTGAGE—Assumption of Debt.—It is no defense to an action on the assumption of a mortgage debt by a grantee of the premises that there has been a foreclosure of the mortgage, there being no admission of the foreclosure proceeding to hold such grantee personally liable.—WARD v. GREEN, Tex., 28 S. W. Rep. 574.

92. MUNICIPAL CORPORATIONS — Eminent Domain—Compensation.—The operation of a steam railway on a street so near to an abutting owner's building line as to unreasonably deprive him of his right of access is an additional burden, entitling him to compensation.—KNAPP, STOUT & CO. v. ST. LOUIS TRANSFER RY. CO., Mo., 28 S. W. Rep. 627.

93. MUNICIPAL CORPORATION — Paving Contract—Invalid Assessments.—Where a city having authority to pave its streets and pay therefor from its treasury, and supposing that it had authority also to assess the cost on abutting property and transfer the assessment in payment for the work, contracts with a person, who also supposed it had such authority in regard to assessments, to do such paving, and to pay him by assigning the assessments to him, the city, not having in fact any authority to make the assessments, will be liable on the contract for the work, though it stipulated that the assessments shall be accepted in payment, and that the city shall not be otherwise liable under the contract, whether the assessments are collectible or not.—BARBER ASPHALT PAVING CO. v. CITY OF HARRISBURG, U. S. C. C. of App., 64 Fed. Rep. 283.

94. MUNICIPAL CORPORATION — Vacation in Public Street—Damages.—A city is liable in damages to abutting owners for a depreciation in the value of their property consequent upon an ordinance vacating a public street.—HEINRICH v. CITY OF ST. LOUIS, MO., 28 S. W. Rep. 626.

95. NEGLIGENCE — Defective Bridge — Contributory Negligence. — In an action for personal injuries through the negligent construction of a bridge, it appeared that the hayrack of plaintiff's sled, on which she was hauling hay, caught on a fork post negligently placed on the bridge. The hay was loaded very insecurely, and had already tipped over once. Plaintiff attempted to start the sled while on the hay, and was thown into the ravine by reason of the load upsetting: Held, that plaintiff was, as a matter of law, guilty of contributory negligence.—FISHER v. TOWN OF FRANKLIN, Wis., 61 N. W. Rep. 80.

96. NEGLIGENCE—Express Company.—One day's delay by an express company in delivering to the addressee a package containing a draft does not constitute negligence where there is not only nothing to indicate necessity for promptness in delivery, but the sender represents the draft to be "papers" worth $50.—BANK OF WATER VALLEY v. SOUTHERN EXP. CO., Miss., 16 South. Rep. 300.

97. NEGOTIABLE INSTRUMENTS—Bona Fide Holders.—A negotiable promissory note for $5,000 was made, without consideration to the makers, for the benefit of a national bank, at the solicitation of its president, for use by the bank as a collateral deposit at the clearing house, and was so used. The "offering book" of the bank indicated that the note was discounted as upon the offer of the makers, but, by the direction of the president, the proceeds of discount were carried to his individual credit. He did not, however, draw out the money, and the bank was not damnified otherwise than by this entry in the president's overdrawn account. By the settled course of business, the president was permitted habitually to borrow money for the bank and to exercise entire control in its affairs: Held, that neither the bank nor its receiver, who is clothed only with its rights, can be esteemed a *bona fide* holder of the note, as against the makers.—FISHER v. SIMONS, U. S. C. C. of App., 64 Fed. Rep. 311.

98. NEGOTIABLE INSTRUMENT — Note — Attorney's Fees.—Where a note recites that, in case it "is placed in the hands of an attorney for collection, we agree to pay 10 per cent. additional on the amount as attorney's fees," a right to such fees accrues when the holder is obliged to place the note in the hands of an attorney before maturity, in order to protect himself against the insolvency of the maker and indorser.—SMITH v. PICKHAM, Tex., 28 S. W. Rep. 565.

99. NEGOTIABLE INSTRUMENT—Note— Release of Indorser.—The individual promise of one member of a firm to release defendant as an accommodation indorser on a note due the firm, and to pay it out of funds in his hands, which had been furnished by the maker, is no defense to an action on the note.—WEBBER v. ALDERMAN, Mich., 61 N. W. Rep. 57.

100. PARTNERSHIP.—Sharing the losses of a venture is not essential to a copartnership. If there is a community of interest in the profits, as such, of the business, and not by way of compensation for services rendered or capital loaned towards the prosecution of the business, it is sufficient to constitute a partnership.—WAGGONER v. FIRST NAT. BANK OF CREIGHTON, Neb., 61 N. W. Rep. 112.

101. PARTNERSHIP — Contract — Agreement to Honor Drafts.—An agreement by a firm with a customer to honor drafts drawn on it by the customer in favor of a person furnishing the customer with money to purchase cattle to be consigned to it, renders it liable on such a draft to the person furnishing money for such purpose.—FIRST NAT. BANK OF PIPESTONE v. ROWLEY, Iowa, 61 N. W. Rep. 195.

102. PARTNERSHIP—Renewal of Note.—The use of the firm name by one partner without the consent of the others in indorsing his personal note is not within the scope of the partnership business, and one who loans money on the note with knowledge that it was the personal obligation of the borrower cannot hold the firm.—CHILDS v. PELLETT, Mich., 61 N. W. Rep. 54.

103. PAYMENT UNDER DECREE.—Where a decree requires the payment of a certain amount to "complainant" within a certain time under pain of forfeiture, a deposit of such amount with the register of the court is not a compliance therewith.—LEWIS v. KEAN, Mich., 61 N. W. Rep. 68.

104. PROHIBITION—Mandamus to Judge.—Prohibition will not lie to prevent a circuit judge from proceeding on the petition of receivers of a railway company asking authority to enter into an agreement for the partial readjustment of the affairs of the company, and from carrying out the decree rendered.—IN RE RICE, U. S. S. C., 15 S. C. Rep. 149.

105. RAILROAD COMPANY — Defective Bridge.—In an action against a railroad company for injuries caused by the fall of its bridge, the opinion of a non expert witness, who examined the bridge immediately after the wreck, as to the cause of its fall, is competent, if he has qualified himself by stating the facts upon which his opinion is based.—GALVESTON, H. & S. A. RY. CO. v. DANIELS, Tex., 28 S. W. Rep. 548.

106. RAILROAD COMPANIES—Degree of Care at Crossings.—A railroad company, at crossings and places commonly used as footways or crossings, where persons are known to cross and may be expected, must use ordinary care to discover their presence, and to avoid inflicting injury on them; and in exercising that degree of care it must use such vigilance and caution as a person of ordinary prudence, under like circumstances, would use.—GULF, C. & S. F. RY. CO. v. SMITH, Tex., 28 S. W. Rep. 520.

107. RELEASE AND DISCHARGE—Ratification.—Where, in action for personal injuries, it appears that plaintiff had received $1,600 from defendant in settlement of damages, and that she waited two years before offer-

ing to return the money, and there is evidence tending to show that plaintiff was perfectly able to understand all about the settlement within ten days after it was made, and that she after that spent the money, it is error to leave to the jury, without definition, the question whether plaintiff disaffirmed the settlement within a reasonable time, and to refuse to instruct them that her expenditure of the money with knowledge of the settlement would ratify the settlement, and that such a ratification, once made, would be final and binding.—CHICAGO, ST. P. & K. C. RY. CO. v. PIERCE, U. S. C. C. of App., 64 Fed. Rep. 293.

108. SEDUCTION—Action by Parent.—The father may maintain in his own right, and for his own benefit, an action for damages for the seduction of his adult daughter, under section 33, ch. 66, Gen. St. 1878.—SCHMIDT v. MITCHELL, Minn., 61 N. W. Rep. 140.

109. STATUTE—Repeal by Implication.—Although repeals by implication are not favored, two irreconcilably repugnant acts passed at different times, relating to the same subject cannot stand together, and the latter operates to repeal the former.—BUSBY v. RILEY, S. Dak., 61 N. W. Rep. 164.

110. TAXATION OF CORPORATE STOCK.—The capital stock of a building and loan association is subject to taxation for State and county purposes.—CHARLOTTE BLDG. & LOAN ASS'N v. BOARD OF COM'RS OF MECKLENBURG COUNTY, N. Car., 20 S. E. Rep. 526.

111. TAXATION — Void Assessment.—A complaint to cancel a special assessment, and to restrain its perfection and enforcement, is not demurrable because it shows that the assessment is void.—BEASER v. CITY OF ASHLAND, Wis., 61 N. W. Rep. 77.

112. TELEGRAPH COMPANIES—Injuries by Broken Wire—Evidence.—In an action against a telegraph company for injuries to a boy 10 years old, it appeared that the boy took hold of a broken call wire hanging from the crossbar on one of defendant's poles, and received a severe electric shock; that there was an electric light wire on the pole, below the crossbar; that the electric light plant was not owned by defendant; and that soon after the accident the broken wire was repaired: Held, that evidence was admissible that nine months after the accident there was no guard or dead wire between the call wire and the electric light wire, as was usual in such cases, and that the call wire was then defective by reason of long use and rust.—WESTERN UNION TEL. CO. v. THORN, U. S. C. C. of App., 64 Fed. Rep. 287.

113. TRESPASS TO TRY TITLE. — The covenantee in a bond to convey land may recover against a mere trespasser, though the consideration has not been paid.—FOLWELL v. CLIFTON, Tex., 28 S. W. Rep. 569.

114. TRIAL — Misconduct of Jury.—In an action against a city for injuries caused by a defective sidewalk, misconduct of jurors in visiting the place of the accident, without any view having been authorized, is ground for new trial.—PEPERCORN v. CITY OF BLACK RIVER FALLS, Wis., 61 N. W. Rep. 79.

115. TRIAL—Province of Jury.—While it is the right of the jury, in general, to judge of the credibility of a witness and the probative value of his testimony, they have no right arbitrarily or capriciously to disregard testimony submitted to them by the court.—DREW v. WATERTOWN FIRE INS. CO., S. Dak., 61 N. W. Rep. 34.

116. TRUST DEED—Consideration.—A deed of trust to real property, executed to secure the payment of a note, given to balance an account and secure further credit, cannot be attacked, on the ground of insufficiency of consideration, after the trustee has acted in pursuance of the power of sale therein granted.—ELMENDORF v. TEJADA, Tex., 28 S. W. Rep. 563.

117. USURY—Right to Interest.—In a suit by the original payee of a promissory note tainted with usury, such payee is not entitled to recover any interest whatever, and can recover only the actual amount of money advanced by him in consideration of the execution of such note, diminished by all payments of both principal and interest made thereon.—BREWSTER v. BANK OF AINSWORTH, Neb., 61 N. W. Rep. 94.

118. VENDOR'S LIEN — Forclosure Suit.—In an action to foreclose a vendor's lien against one in possession of the land under a bond for a deed, an answer which alleges that defendant was induced to enter into the contract of sale by false representations as to plaintiff's title, and is willing to perform the contract on his part, but that plaintiff has no title and is insolvent, and asks that plaintiff be required to acquire title to the land, and that, on his failure to do so, the contract of sale be rescinded, and the defendant have judgment for the amount of the purchase money paid, states a good defense.—JOHNSON v. DOUGLASS, Ark., 28 S. W. Rep. 515.

119. WILL.—Where a will provides that the widow shall "have control" of certain land until the devisees become of age, and that she shall "have firewood off" a part thereof, she is entitled only to firewood from that part of the land, and cannot cut the more valuable timber into lumber, and buy fuel with the proceeds of the sale thereof.—HOGAN v. HOGAN, Mich., 61 N. W. Rep. 73.

120. WILLS—Abatement of Legacies.—Where an estate is insufficient to pay all the legacies, the general should abate before the specific legacies.—HEATH v. MCLAUGHLIN, N. Car., 20 S. E. Rep. 519.

121. WILL—Devise to Wife.—Testator devised his estate to his wife for life, with a remainder over of one-half to a religious association, and one-half to the heirs and legal representatives of his wife. The wife renounced her rights under the will, and elected to take, in her right of dower, under Rev. St. 1879, § 2190, one-half of said estate absolutely, subject to debts: Held, that the will operated only upon the remaining half, and that the religious association, as a devisee in remainder, took one fourth of the whole.—LILLY v. MENKE, Mo., 28 S. W. Rep. 643.

122. WILLS—Payment of Legacies. — A testator devised lands to his sons, to take effect at his death or remarriage of the widow, on payment by him of certain legacies when he reached the age of 21 years, "provided he is then entitled to possession of said lands; if not, at such time as by the terms of this will he shall come in possession thereof:" Held, that the legacies were not due and payable while the widow was alive and unmarried, though the son had become of age, and had obtained a deed of the property from her.—FORD v. KRAMBEER, Iowa, 61 N. W. Rep. 174.

123. WILLS—Testamentary Capacity.—Evidence that a testator was in impaired health, and was peculiar, eccentric, dissipated, and melancholy, is not sufficient to show want of testamentary capacity.—HUTCHINSON v. HUTCHINSON, Ill., 38 N. E. Rep. 926.

124. WITNESS—Declarations of Deceased. — Rev. St. art. 2248, providing that in an action by or against an administrator evidence as to transactions with or statements by his decedent shall not be admitted unless the witness is called by the party against whom it will operate, applies to an action by a surviving partner to enforce a firm debt, where he sues also as sole executor of the deceased partner.—STEWART v. ALTMAN, Tex., 28 S. W. Rep. 461.

125. WITNESS—Reputation for Veracity. — Evidence of the reputation of a witness for veracity in the neighborhood from which he moved two years before the trial is admissible.—NORWOOD & BUTTERFIELD CO. v. ANDREWS, Miss., 16 South. Rep. 262.

126. WITNESS — Transaction with Decedent.—Under Rev. St. 1889, § 8918, providing that, where an administrator is a party to an action, the other party shall not be admitted to testify in his own favor, unless the contract in issued was originally made with a person who is living, and competent to testify, the plaintiff in an action to cancel a trust deed may testify as to transactions, regarding said deed, had with the agent of defendant's intestate.—MILLER v. WILSON, Mo., 28 S. W. Rep. 640.